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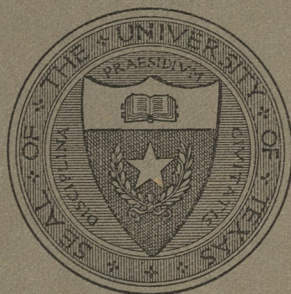
HUMANISTIC SERIES NO. 8

MAY 1, 1910

*Crime and the Treatment of the
Criminal*

BY

CHARLES SHIRLEY POTTS, M. A., LL. B.
Adjunct Professor of Law and Government
University of Texas



Entered as second-class mail matter at the postoffice at Austin, Texas

AUSTIN, TEXAS

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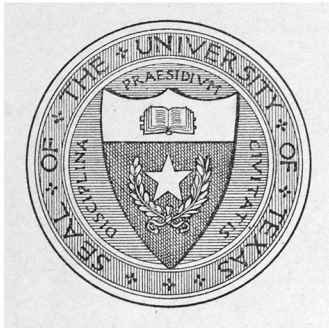
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Cultivated mind is the guardian genius
of democracy. . . . It is the only dic-
tator that freemen acknowledge and the
only security that freemen desire.

President Mirabeau B. Lamar.

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CRIME AND THE TREATMENT OF THE CRIMINAL

I. THE PROBLEM OF THE CRIMINAL.

No problem which mankind has attempted to solve has proved more difficult of solution than the problem of protecting society against crime and the criminal classes. The problem is as old as organized society and at all stages of social development a large part of the time and thought and means of the governing classes has been expended in efforts to protect society from its internal, insidious foe, the criminal, and to eliminate him entirely from the body politic. Harsh measures of retaliation and retribution have been adopted but without avail. Bloody repressive codes, intended to terrify the evil-doer or remove him at once by means of the gallows or guillotine, and, by such means intimidate and deter others from the commission of similar deeds, have been enacted and carried into effect with a savage brutality out of all keeping with the pacific purpose sought to be accomplished, only to find in the end that criminals multiplied more rapidly than hangmen and that the flow of blood only incited others to crime. Society has developed a multitude of police officers and courts and jails and penitentiaries for the purpose of eliminating the criminal, and yet we are forced to admit that little actual progress has been made. In fact, many students of crime, such as Lombroso and Ferri, the great Italian penologists, contend that crime is on the increase in America and in all the countries of Europe with the possible exception of England. The late Charles Dudley Warner estimated that we have a hundred thousand habitual and professional criminals in this country. "Those who watch the criminal reports," said he, "are alarmed by the fact that an increasing number of those arrested for felonies are discharged convicts. This is an unmistakable evidence of the growth of the outlaw classes."¹

¹These statements by the older writers, as to the increase of crime, are fully corroborated, so far as this country is concerned, by the investigations of Mr. Hugh C. Weir, whose article in the *World Today*, for February, 1910, is a fearful indictment of our police system and our adminis-

But whether crime is actually increasing or not is a question that need not detain us here. Enough is known to make it perfectly apparent to even a superficial student of social affairs that the measures heretofore adopted for the protection of society against the criminal have not been more than partially effective. We have not won, we are not winning, our age-long fight with the criminal. The problem seems little nearer solution now than when Moses received the law on Mount Sinai. It is not surprising, therefore, that men are coming to question the practical value of the measures heretofore in use and that there should be a general demand for "prison reform." In many cases this demand for reform goes no further than a humane desire to eliminate the brutalities connected with the lease system and the use of corporal punishment in the prisons, leaving all untouched the heart of the great problem that is now clamoring for solution, namely, *are the measures we are using accomplishing the object sought to be accomplished, the protection of society against the criminal and the elimination of the criminal class? If not, what measures can be adopted that will effect the desired result?*

This, then, is the problem confronting the people of Texas—thrust to the front by the events and investigations of the last few months—to examine dispassionately the means and methods now in use, to cast aside such of them as are found to be useless or positively harmful, and to modify and amend the others in such a way as to bring them into harmony with the best thought and practice of the age.

Fortunately for us we are not without much help from the out-

tration of the criminal law. He asserts that there are 250,000 persons in this country "engaged in the systematic pursuit of crime as a business," that 10,000 persons are murdered in this country every year, or an average of 200 per week. We have more homicides every year than Italy, Austria, France, Belgium, England, Ireland, Scotland, Spain, Hungary, Holland, and Germany combined. "Chicago," says he, "averages 118 murders in a year. In the same space of time, Paris records only 15 murders and attempted murders. London, four times the size of Chicago, has only 20 murders. In the course of twelve months, Georgia—a typical example of the average American State—records 45 homicides—more than the whole of the British Empire! . . . There are four and a half times as many murders for every million of our population today as there were twenty years ago. . . . Of the murderers, 2 in every 100 are punished. The remaining 98 escape—absolutely free! In many of our States, the proportion of convictions is only half as great."

side in seeking for a solution of this problem, if we will but avail ourselves of the research and experience of others, in Europe and America. For fifty years or more a large number of students of social problems, men of great scientific learning and experience in handling criminals, have devoted themselves to the study of crime and its cure, and a great body of literature is now available on the subject. Tens of thousands of criminals of all classes have been examined and their mental, moral, and physical defects and disabilities have been carefully noted. The hereditary and social causes of crime, the criminal codes and the courts of law, the jails, the prisons, the penitentiaries, the methods of discipline and the means used for effecting the reform of the prisoners have all received the most careful and painstaking study, and many of the conclusions reached have been embodied in the laws and penal institutions of one or another of the countries of Europe and the states of our Union. From this body of scientific information and practical experience we may learn much that will be valuable to us in our search for a remedy for our social disease. The object of this bulletin will be accomplished if any considerable portion of this information and experience is rendered accessible to the reading and thinking elements of the community.

II. COST OF CRIME.

The desirability of reducing the amount of crime and eliminating the criminal class is so patent that it does not need to be dwelt upon here. In the abstract it seems absurd in the extreme for an organized society to allow a small fraction of its members to disturb the peace and security of the community, and cause the honest citizen to live in constant dread of property loss or personal violence. The expense of guarding against crime, of arresting and trying and caring for the criminal class is out of all proportion to their numbers, entailing a heavy burden of taxation on the rest of society. The cost of police, sheriffs, courts, judicial officers, courthouses, jails, and penitentiaries constitutes a large part of the total expense of maintaining civil government, and this burden the people must bear in the form of increased taxation. Dr. Eugene Smith, an eminent lawyer and penologist of

New York City, for many years an officer in the American Prison Association, estimated the total cost of the penal machinery in this country, in 1900, at \$600,000,000 annually, or about eight dollars for every man, woman, and child in the country.¹ Estimating the population of Texas at five millions, we would get a total financial burden of forty million dollars a year as our direct and indirect share of the waste resulting from the deeds of the criminal classes. This is eight times the annual cost of maintaining our state government, including all our educational and eleemosynary institutions. It will, therefore, be seen that any measure that will effectually reduce the amount of crime or will rid us entirely of the criminal class will be of great economic as well as social value to the community.

III. THE CLASSIFICATION OF CRIMINALS.

Before one can arrive at any just estimate of the value of the methods now in use in our penal institutions, or form a correct judgment of the measures that may be proposed, it is necessary to get a general view of the fundamental principles that underlie the science of penology. It may be necessary, therefore, to devote some attention to a consideration of matters that seem only indirectly connected with the prison situation in this state. But these general principles, it is believed, will be found useful when we come to a consideration of the situation that now confronts us and institute a search for remedies for our ills. Let us begin, then, with the attempt made by criminologists to group criminals in classes, according to their physical, mental and moral characteristics.

Probably the most satisfactory classification of criminals is that worked out by the great Italian criminologist, Enrico Ferri, for-

¹*Report National Prison Association, 1900.* This estimate is regarded as conservative by Mr. Boies (Boies, *Science of Penology*, 11). A much more liberal estimate of the annual cost of crime will be found in the article by Mr. Hugh C. Weir, in the *World Today*, referred to above. He estimates the total annual cost of crime, including the value of property stolen and destroyed, as well as the money spent on police, jails, courts, etc., at \$1,373,000,000, or about \$14 per capita for our present population. Texas pays, according to population, about \$65,000,000 of that amount.

merly professor of criminal law at Rome and a member of the Italian Parliament. His classification is as follows:

1. Criminal madmen.
2. Born, or instinctive, or hereditary criminals.
3. Habitual criminals.
4. Occasional criminals.
5. Criminals of passion.¹

The last class, it will be noted, is but a special class of occasional criminals. To the list here given Boies adds another or sixth class which he calls "presumptive criminals," including those who have not actually committed crimes, but who from their heredity and environment may naturally be expected to do so.² Let us note briefly the characteristics and numerical strength of each of these classes.

The first class is composed of those habitual criminals who present a "conspicuous and clinical form of mental aberration, which accounts for their anti-social activity." Dr. Drähms rejects this classification on the ground that an insane person cannot be classed as a criminal. But this criticism is more captious than real, and is of little practical value. It is sufficient for our present purposes to know that here we have a more or less distinct class of persons whose mental condition renders them dangerous to society and makes it necessary to commit them to the care of trained experts, to be kept in confinement until cured. This class is estimated to compose from 5 to 10 per cent of the total number of criminals.

Born, or instinctive, or hereditary criminals are those habitual criminals who are not of unsound mind but who are "induced to crime by inborn tendencies, which are manifest from their birth, and are accompanied by symptoms of extreme moral insensibility."

Closely related to this class and almost indistinguishable from it is the class denominated "habitual criminals." This class is composed of individuals who have been criminals from their childhood, but "who are in a special degree a product of their physical and social environment, which has persistently driven

¹Ferri, *Criminal Sociology*, pp. 23-24.

²Boies, *Science of Penology*, p. 20.

them into the criminal life." They are the street Arabs, the children of the slums, whose parents, efficient preceptors in vice and crime, have in many cases driven them forth to rob and pil-lage, and have profited in proportion to the craft and skill that they have developed. Ferri estimates that from 40 to 50 per cent of all criminals belong to these two classes, instinctive and habitual criminals, who are the most persistent and dangerous classes with which society has to deal. Other investigators claim that as high as 60 or 70 per cent belong to these classes, while, on account of their continual criminal activity, at least two-thirds of all crimes may be charged to them.¹ It is doubtless true, however, that these percentages differ with the different countries and the different social and economic environments.

The remainder of the criminal class, varying from 30 to 50 per cent of the total number, belong to the class of "occasional offenders," which, as stated above, includes the fifth class, or the so-called criminals of passion. The members of these classes are least vicious of all criminals and approximate most nearly the normal individual. They are as a general rule morally weak and find themselves unable to resist some sudden or unusual temptation. Their weakness of character renders them susceptible to influences, either good or bad, and they may become habitual criminals on the one hand or honorable citizens on the other, according to the character of influences and associations with which they are surrounded. Robbed of their self-respect and branded as jail-birds by short terms of imprisonment, especially where they receive brutal treatment and are allowed to associate with hardened criminals, they rapidly degenerate and soon join the ranks of the habitual criminals, and by so doing become a permanent menace or a permanent burden to society. Under proper treatment, however, a large percentage of this class may be strengthened in character and developed into honorable and useful citizens. Here, then, is the most hopeful field for reformatory efforts—though by no means all members of the other classes are hopeless—and properly equipped reformatory institutions under the control of experts in the field of criminology will restore a large majority of these occasional offenders to the ranks of civil society.

¹Boies, *Science of Penology*, p. 97.

Thus may criminals be classified into the several groups, ranging all the way from the madman, who, while not morally responsible for his acts, is none the less dangerous to society; through the ranks of the instinctive and habitual criminals upon whom heredity and early-acquired habits have bound an awful burden of criminal tendencies, so great in many cases as practically to destroy the element of free moral agency and fix upon them a life of shame; up to the occasional offender, who is usually weak but not inherently vicious, and who approximates closely the character of the normal man. Some such classification is necessary to any intelligent understanding of the needs of the various offenders as they fall into the clutches of the law, and without such an understanding there can be no rational application of reformatory agencies. *It is an axiom in penal science that the punishment must fit the criminal, not the crime.* The disease must be treated, not the symptom. The patient cannot be healed until the physician has determined the nature of his malady. All reformatory measures must begin with a careful study of the physical, mental and moral defects of the individual criminal and the importance of a proper and scientific classification of criminals in any intelligent penal system cannot be too strongly insisted upon.

From what has been said in the preceding discussion it is strongly intimated that students of criminology do not regard criminals as entirely normal individuals, but in some cases as markedly abnormal. As an understanding of these abnormalities is an important factor in determining the treatment that should be accorded each class of criminals it will be worth our while to examine the subject a little more carefully.

IV. THE CRIMINAL AN ABNORMAL PERSON—THE OLD AND THE NEW VIEW.

No change that has taken place in the last half century, as a result of the investigations of scientific penologists, is more significant and far-reaching in its effects than the changed view that is now taken of the criminal and his crime. Formerly the criminal was regarded as a normal person, sound in mind and body, who wickedly and maliciously chose to injure others. He was entirely responsible for his acts and should be punished accordingly.

Each act represented a certain amount of wickedness or criminality for which a corresponding amount of suffering or punishment should be inflicted by society, as a recompense. No one stopped to inquire into the physical or mental condition of the culprit unless he was insane, or to study the heredity and social influences acting upon him or the economic pressure under which the crime was committed. The high and the low, the strong and the weak, the rich and the poor, the well-fed and the starving, the mentally strong and the feeble-minded, were regarded as equally guilty, and, in theory, at least, they should receive the same punishment. This was true in theory only, for in actual practice the rich and powerful, who are most nearly responsible for their acts and have the least excuse for committing crimes, are usually the ones who receive the least amount of punishment, if any at all, while the poor wretch at the bottom of the social ladder, who is morally least responsible, is forced to bear the law's penalty in all its severity.

But this estimate of the criminal is gradually passing away. According to the view now held by practically all students of criminal sociology, the instinctive criminal is not a normal person, but is in many cases distinctly abnormal. The amount and character of abnormality varies greatly in different individuals and in different classes of criminals, but a careful study of thousands of cases establishes the fact beyond the peradventure of a doubt that a very large per cent of criminals, especially of instinctive and habitual criminals, are deficient in some of the qualities, physical, mental, and moral, that go to make up the normal individual.

The physical abnormalities of criminals include various irregularities and deformities of the head, the face, the hair, the ears, the hands and feet, and the internal and sexual organs. While no invariable rule can be stated, it is found for example that the head is unusually small in thieves as a class, and unusually large in murderers as a class. It is claimed by many experts that they can determine the class to which a criminal belongs by the facial expression and the facial abnormalities. Thus those guilty of crimes of violence have heavy prominent lower jaws, resembling the heavy jaw of the savage; criminals of passion have high cheek bones; while pickpockets and petty criminals frequently have receding chins and sallow complexions. The beard in criminals is

usually scanty, it is said, while the hair on the head is abundant and baldness is relatively rare. The hands and feet are frequently unusually large or abnormally small and are often misshapen or deformed, while the arms are sometimes unusually long, the criminal in this respect resembling the lower races of man and the higher orders of apes.

The physical defects of criminals are frequently more serious than those above mentioned. "Among the inmates of the Elmira Reformatory," says Dr. H. Wey, formerly prison physician, "the greatest physical deficiency and least resistive power is found in the respiratory apparatus. Pigeon-breasts, imperfectly developed chests, and stooping shoulders abound. During a period of eight years, with 26 deaths, 13, or 50 per cent., were from diseases of the chest, not including affections of the heart." Heart disease, too, is common among criminals. Out of 54 examined by Flesch, 20 per cent. died of heart disease, and 50 per cent. showed affections of the heart. Heart disease is also common among the insane. Its tendency to produce mental alterations has often been noted; pride, egotism, and an inclination to violence are found among those suffering with certain forms of heart disease. This is not at all surprising when we remember the close connection between the mental processes and the supply of blood to the brain.¹

From the foregoing statement of facts, which might be very greatly extended, it is clear that criminals as a class, especially hereditary and habitual criminals, are not physically normal persons, and that, in many cases, their physical abnormalities are so great as to render them not entirely responsible for their acts. Many of them, it is asserted, do not differ greatly in their ability to order their actions and control their conduct from the insane, and stand in need of medical attention, diet, and exercise of the proper kind, far more than they need punishment of the traditional kind.

When we turn to the moral and intellectual side of the criminal we find him no less abnormal than on the physical side. Most habitual criminals seem to be utterly devoid of the quality of moral sensibility. One observer remarks: "If criminals have remorse, it is that they have not committed more crimes, or that

¹Ellis, *The Criminal*, pp. 88-89.

they have let themselves be caught." Another writer says: "During so many years I ought to have been able to seize some indication, however fugitive, of regret, of moral suffering. I have perceived positively nothing. Seclusion and excessive work only develop among those people a profound hatred, the thirst of forbidden pleasures, and a terrible indifference." Dr. Wey, of Elmira, quoted above, says: "Scenes of heartrending despair are hardly ever witnessed among prisoners; their sleep is disturbed by no uneasy dreams, but is easy and sound; their appetites, also, are excellent." Of four thousand prisoners examined at Elmira, more than one-third showed positively no susceptibility to moral impressions, while only twenty-three per cent were ordinarily susceptible.¹

Along with this moral insensibility in the instinctive criminal goes an utter want of foresight, or ability to realize the future, to appreciate the significance of future pleasure or pain—a deficiency strongly noticeable in children and in savage and primitive races. It is this quality, or lack of quality, that renders futile in so many cases the attempt to prevent the commission of crime by the threat of harsh measures.

Intellectually also the criminal is inferior to the normal man. With the exception of forgers and swindlers and a few similar classes, criminals are as a rule "stupid, inexact, lacking in forethought, astoundingly imprudent; on the other hand they are cunning, hypocritical, delighting in falsehood, even for its own sake, abounding in ruses. . . . The stupidity and the cunning of the criminal are in reality closely related, and they approximate him to savages and to the lower animals. . . . 'In spite of the cunning and tricks, which are too gratuitously credited to thieves, their stupidity generally is scarcely credible; they nearly all resemble the ostrich, who, when his head is hidden behind a leaf, thinks that he is not seen because he cannot see.' . . . Dr. Wey, of Elmira, says: 'It is a mistake to suppose that the criminal is naturally bright. If bright, it is usually in a narrow line and self-repeating. Like the cunning of the fox, his smartness displays itself in furthering his schemes, and personal gratification and comfort.'"²

To these older authorities may be added the most recent testi-

¹Ellis, *The Criminal*, pp. 124-130.

²Ibid., pp. 133-134.

mony from Elmira, taken from the latest published report of that admirable institution: "The popular idea of a criminal is that he is one who, while he might just as well do good, deliberately chooses to do evil, and therefore he should be punished. We find some of this character, but their percentage of the whole number, is small. There are many other kinds; for example, during the year we have transferred twenty-seven men to the Dannemora insane hospital, who probably were so insane when committed that they had no moral responsibility for their acts. They were transferred not simply because they were insane but because they were so insane as to be dangerous. We retained in the reformatories a great many others who, in popular speech were 'queer,' 'a little bit off,' 'not quite all there,' or 'cranks,'—all mildly insane, and imperfectly responsible, but more or less capable of improvement.

"In an appended report of Doctor Christian, the senior physician at Elmira, on eight thousand consecutive admissions examined by him, he classifies two thousand nine hundred and ninety-three, or 37.4 per cent., as defective, *i. e.*, in one way or another, mentally not normal human beings.

"Many of those with ordinarily sound minds have such unsound bodies that they are incapable of holding their own in the competition of the industrial world. For example, Doctor Christian, out of the same eight thousand, found one thousand, five hundred and ninety-three, or 19.9 per cent., with lungs more or less tuberculous. His recent more thorough examinations greatly increase this percentage. Many who have no particular disease are poorly or unevenly developed. The average physical condition is low.

"In a recent issue of 'Charities,' an authority expresses the opinion that, 'many who find their way into the police court are social misfits. Fifty per cent of the criminal class would probably come under this definition—defective in body or intellect and totally unable, without friendly help, to direct their lives.' A large proportion are illiterate and the great majority know no trade or handicraft at which they can readily secure or retain employment. Add to these things an unfavorable environment, no training in self-control, and, perhaps, direct instruction in vice, and a condition of affairs frequently comes about under which crime is committed, not only without realizing that it is wrong, but actually in the belief

that it is right. It is obvious that what such men need is not punishment, but medical service, physical training, instruction in letters, arts, morals and manners, and spiritual development."

Similar testimony could be multiplied almost indefinitely, all tending to show that the criminal is deficient in some of the essential qualities that go to make up the normal man. It may, therefore, be regarded as a fairly settled principle of criminology that *the instinctive criminal is an abnormal individual, whose crimes are largely traceable to the defects in his physical and in his mental and moral make-up*. These defects are mainly inheritances from his ancestors, or are due to improper nourishment, arrested development, or vicious habits fixed upon him during infancy and early childhood by wretched home surroundings, for which he should not be held accountable. It is estimated by criminologists that from fifty to seventy-five per cent. of detected cases of criminality are the result of prenatal causes.¹

V. THE NATURE OF CRIMINAL CONDUCT.

Possibly a clearer view of the character of the criminal may be obtained by a little more careful examination of the nature of crime itself. Without attempting any metaphysical distinctions, we may say that *a crime is an act which is regarded by the majority of the people in the community as an anti-social act, and is, because of this belief in its anti-social nature, prohibited by law*. There is not necessarily anything base or essentially wicked in the act itself. In fact, it may be a wise and virtuous act, in which case the fact that it has been declared a crime will only prove the ignorance or vicious character of the majority who have declared it a crime. From this it is clear that an act that is regarded as anti-social or criminal in one age of the world, or in one country, may be regarded as highly social in another age, or among a people in a different state of civilization.

"Among many savages, infanticide, parricide, theft and the rest far from being anti-social, subserve frequently some social end, and they outrage, therefore, no social feeling." On the other hand many anti-social acts of former ages as a result of advancing civi-

¹Boies, *Science of Penology*, p. 39.

lization are no longer so regarded. We no longer imprison for debt or punish for independence in religious belief. The French criminologist, Tarde, has pointed out that of the ten crimes which the Hebraic law punished with stoning, nine have even ceased to be offenses in our modern European countries, and the tenth, rape, has only remained a crime by entirely changing its character; it has become a crime against the person instead of a crime against property.

So, too, deceit, craft, cunning and ferocity, qualities thoroughly despicable, at this stage of European civilization, were formerly highly useful in preserving the life of the individual and of the tribe to which he belonged. "Criminality, therefore, cannot be attributed indiscriminately even to the lowest of races. It consists in a failure to live up to the standard recognized as binding by the community. The criminal is an individual whose organization makes it difficult or impossible for him to live in accordance with this standard, and easy to risk the penalties of acting anti-socially. By some accident of development, by some defect of heredity or birth or training, he belongs as it were to a lower and older social state than that in which he is actually living. It thus happens that our own criminals frequently resemble in physical and psychological character the normal individuals of a lower race." Mr. L. Owen Pike, the historian of crime in England, says: "Of a very great number of modern habitual criminals it may be said that they have the misfortune to live in an age in which their merits are not appreciated. Had they been in the world a sufficient number of generations ago, the strongest of them might have been chiefs of tribes. With the disposition and the habits of uncivilized men which he has inherited from a remote past, the criminal has to live in a country where the majority of inhabitants have learned new lessons of life, and where he is regarded more and more as an outcast as he strives more and more to fulfill the yearnings of his nature." In the same strain Prof. Prins, of Brussels, remarks: "The criminal of today is the hero of our old legends. We put in prison today the man who would have been the dreaded and respected chief of a clan or a tribe."¹

¹Ellis, *The Criminal*, pp. 206-208.

In this view of the case, then, the criminal is an anachronism, a man living out of the age in which he belongs, a straggler who has fallen behind in the march of civilization. By heredity, or poverty, or disease, or mal-nutrition, or the lack of early training, he represents a case of arrested development, the mind and instincts of a child in the body of an adult. He is anti-social. He cannot be rendered social by measures that crush as with a rod of iron, but only by such means as enable him to overcome his defects and adjust himself to the society in which he must live. It hardly need be said that anything in the nature of brutal treatment only fixes him all the more strongly in his anti-social instincts.

With this preliminary view of the nature of crime and the character of the criminal, we are prepared to examine and criticise the systems of punishment that have been in vogue at various times in the past.

VI. THREE SYSTEMS OF PUNISHMENT. RETALIATION.

Three principles have been recognized in the various systems of punishment that have been devised and made use of by society in its dealings with the criminal. These principles are, first, retaliation and retribution; second, deterrence; and, third, reformation. These ideas are doubtless all more or less present in all systems of punishment, and the various systems differ mainly in the emphasis that they place upon one or another of these principles.

The principle of retaliation, or retribution, though unfortunately a large ingredient in most existing penal systems, was probably the fundamental idea in most of the early codes. The protection of society and the reformation of the criminal seem to have played but a minor part in those early systems. The idea uppermost was revenge, an expression of the primeval instinct in man when struck to strike back. At first the state undertook to punish only those who offended against the majesty of the state itself, who disobeyed its orders and mandates, leaving each individual to avenge himself upon his enemies for the wrongs committed upon him. But this system of private revenge resulted in constant turmoil and internal strife, similar to the family feuds still common in the mountainous districts of some of our states, and the state found

it necessary to forbid private vengeance and assume the task of punishing for private as well as for public offenses. Thus the state came to recognize itself as the injured party even in the case of private wrongs and proceeded to avenge itself upon wrong-doers by inflicting upon them an injury equivalent to the wrongs committed by them. Thus each crime was catalogued, so to speak, and its criminality roughly estimated, and opposite each was set the punishment that was supposed to be an exact equivalent. In this way society sought to repair an injury to one of its members by inflicting an equal injury upon another of its members. In all this, it is safe to say, there was practically no thought of the results that might be produced by such treatment upon the character and conduct of the evil-doer. The question of the criminal's needs was a matter of small concern. He had violated the law and he should pay the penalty.

Such a system, it is hardly necessary to say, failed to accomplish the all-important object of a penal system, the protection of society and the reformation of the criminal.

VII. DETERRENCE. THE FAILURE OF HARSH PENALTIES.

The failure of the system of retaliation to prevent the commission of crime led to the introduction or development of a system, based largely on retaliation to be sure, but stressing the idea of deterrence. Retaliation looked mainly to the past and sought to avenge the wrong that had already been done. The system of deterrence was an advance over the older system in that it looked to the future protection of society. This worthy object was to be accomplished by the use of penalties so brutal and terrifying that men would not dare to commit crimes. The suffering inflicted upon the evil-doer might be more or less than he deserved, in strict justice, or than would be effective in bringing about his reformation. That was not the question; the object was to make the penalty so severe that the example should not be lost on others.

In carrying out this system of repression we find the ingenuity of man taxed to the limit to devise new forms of torture and punishment. Between thirty and forty different methods of inflicting the death penalty were devised and received the sanction of law. It

was a very common practice to cut the victim's body into a number of pieces and expose them on poles in public places in the different sections of the country, as a bloody warning to all evil-doers. It is estimated that during the reign of Henry VIII, when England's population did not exceed five millions, no less than seventy thousand persons suffered the death penalty. One French judge boasted that in sixteen years he had caused more than eight hundred victims to be burned at the stake, while sixteen others committed suicide in one year to keep from falling into his hands. As late as the American Revolution, Blackstone writes in his *Commentaries*: "It is a melancholy truth that among the variety of actions which men are daily liable to commit, no less than one hundred and sixty have been declared by act of parliament to be felonies, without benefit of clergy, or, in other words, to be worthy of instant death." The hangman, the headsman, the rack, the stake, the Inquisition, and the guillotine were in ceaseless operation, while loathsome dungeons, foul with disease and death, were crowded with victims awaiting their day of execution.

That such a system failed in its object is not at all surprising. The constant flow of blood brutalized the masses of the people, blunted their moral sensibilities, cheapened human life, and acted as a powerful stimulus to the commission of further crimes. As we have seen, instinctive and habitual criminals are greatly lacking in prudence and foresight, or the ability to appreciate future pleasure or pain. It follows, therefore, that these harsh repressive measures acted very feebly in their deterrent effect on precisely the most dangerous and persistent class of evil-doers, and the same is doubtless true of the class known as "criminals of passion," whose acts, as the name suggests, are committed as a result of some over-mastering passion. Probably the most important effect produced by these summary measures was the possible reduction in the number of criminals, due to the wholesale executions, and to the further fact that they were thus prevented from propagating their species. The logical conclusions, as here stated, are fully corroborated by the testimony of history, and Ferri, after citing a number of instances of the utter failure of repressive measures, says: "Thus even apart from statistics we can satisfy ourselves that crimes and punishments belong to two different spheres; but when statistics

support the teaching of history, no doubt can remain as to the very slight (I had almost said the absence of any) deterrent effect of punishments upon crime."¹

VIII. REFORMATION AND REHABILITATION.

1. *Theory of the Reformatory System.*

The object sought to be accomplished by the reformatory system of punishment is the same as that in the system of deterrence, in so far as the latter kept any object in view. In theory, at least, both have in view the protection of society. The difference in the two systems, then, is not in the object sought to be accomplished, but in the methods and instruments used. Deterrence seeks to eliminate the criminal by wholesale executions, and to frighten others into obedience to law. The reformatory system would also eliminate the criminal, not by putting him to death, but by assisting him to remove his anti-social instincts and tendencies, and restoring him to society an honorable and useful citizen.

The advocates of this system recognize that society has but one avowed enemy, the criminal; that it must protect itself against him at whatever cost to him, provided always that no greater force be used against him than is necessary to accomplish the desired result; and that to accomplish this end society's enemy must either be reconciled, or permanently disarmed, and, as a corollary, disarmed during the process of reconciliation. They contend, therefore, that when society discovers an enemy in its midst, it should make a serious effort to reconcile him, and, failing in that, should put him where he can be made to earn his keep but never again be given an opportunity to injure others. This means that there should be at least two grades of penitentiaries, one for those criminals for whom hope of reconciliation is entertained, and the other for the incorrigibles; and that every criminal dangerous to society should be sent to the penitentiary, not for one year nor for ten, but for an indefinite period, to remain until in the judgment of the constituted authorities he is fit to be restored to society. If he proves utterly depraved and irreconcilable, then under no circumstances

¹Ferri, *Criminal Sociology*, p. 84.

should he be released to return to his evil practices and to prey upon the community.

It should be borne in mind, too, that the reformatory system does not do away with deterrence. Few will be found to deny that the fear of punishment does have an important deterrent effect upon many people who are morally weak and who might otherwise become criminals. Deterrence is, therefore, an important agency in protecting society against the potentially criminal class, and the advocates of the reformatory system would be the last to wish to deprive the community of the protection thus afforded. But they assert that it is easily possible to overstress the importance of deterrence and to underestimate the value of reformatory measures; that, if deterrence be allowed to become the chief object of the penal system, there is constant danger that the codes will become so harsh that they will brutalize the masses and defeat their own purpose.

In considering the matter of deterrence it is well to remember that certainty of punishment is a more important factor than severity of punishment. Where many escape punishment altogether, criminals—and no class is more inclined to a superstitious belief in their good luck—will take the risks of severe penalties, trusting to escape detection and conviction, or to receive a pardon. Less severe penalties, which are certain to be enforced, will exercise a far greater deterrent effect. The fact that some men have lost their lives in playing football does not deter others from playing, for each fellow believes that he will be lucky and will escape; but if it were positively known that every man who should play football in the future would break his nose or his collar bone, the deterrent effect would be very great—there would probably never be another football game played. So it is with punishments; it is the certainty of conviction rather than the severity of the penalty that exercises the deterrent effect. And what gives point to this argument is the fact that the severest penalties cannot be enforced with any certainty in a community that does not approve them. The certainty of the punishment generally decreases with the increase in its severity. In this country, for example, courts and juries have practically nullified the death penalty, as a punishment for murder. In 1904, there were 2444 persons tried for

homicide in this country. Of this number 106, or only 4.3 per cent, received the death penalty. In the Southern States the situation is even worse than in the country as a whole. Kentucky had 147 homicides; Tennessee, 134; Alabama, 120; Mississippi, 138; Louisiana, 154; and Texas, 150; a total of 843. Of this number of persons committed, only four, or less than one-half of one per cent., were condemned to die—three in Texas and one in Mississippi. From this it would seem that the law inflicting the death penalty for murder is practically a dead letter. Through the codes, the law speaks in thunderous tones, but through the courts, its voice dwindles to a whisper—and it is the whisper only that the criminal heeds. He cares nothing for paper laws; he fears only the mailed hand that actually carries the laws into execution.

And it should be noted in this connection that the reformatory penalties referred to are genuinely punitive in character, and are quite as much dreaded by criminals as any other form of imprisonment. The advocates of the reformatory system are not sentimentalists and have no desire to make a hero of the criminal or to scatter roses in his path. They realize that his disease is of a serious nature and they would apply a remedy correspondingly severe, but not cruel or brutalizing in its effects. The criminal is deprived of his liberty, not for a year or two, but for an indefinite period, and he must prove himself worthy before he can ever hope to regain it. His former habits of life are completely broken up, and his days are so filled with labor and study that he has no time left for brooding over his wrongs, for planning new adventures, or for glorifying his former evil deeds. The hours of work are sufficiently long, the food sufficiently plain, and the discipline sufficiently severe to make his prison life a hard one and to exercise a powerful deterrent effect upon him when he has regained his freedom. *Therefore, it may be safely concluded that the deterrent effect of a rational system of reformatory penalties will be much greater than the harsher measures of a repressive code. Such a system of reformatory penalties will appeal to the sense of justice of courts and juries, and for that reason they will be more strictly enforced, and as a consequence, will exercise a more effective deterrent influence.*

2. *Can the Criminal Be Reformed?*

From the foregoing it will be seen that the reformatory system aims at the protection of society by reforming known criminals, and by deterring others from committing criminal acts. But this raises the question whether it is possible to reform any considerable portion of those committed to our penitentiaries. If not, attempts in that direction will only prove to be a useless expenditure of time and money, and society would better find some other way of disposing of evil-doers.

Fortunately the science of criminology is able to answer the question in the affirmative, and it bases this answer on both theory and practical experience. It is not claimed that all criminals can be reformed. Probably a large per cent of those well advanced in years and hardened in crime cannot be reformed. Experience has not gone far enough to warrant a positive statement as to the number of this class that may be reformed, but *it may be definitely stated that a large per cent of young criminals and first offenders can be reformed.*

In our discussion of the classes of criminals, it was stated that from thirty to fifty per cent of all criminals belong to the class of "occasional offenders," which was made to include "criminals of passion." It is believed that a very large majority of this class, may, with the proper treatment, be reformed and restored to society. Of the classes known as "born criminals" and "habitual criminals," doubtless a smaller percentage can be rendered fit for freedom, but experience shows that a very considerable number, probably a majority, of even these classes can be reconciled to society. The truth is that the men in prisons are not wholly bad, many of them no worse morally than many people on the outside. And they may be influenced for good or bad by the same means and agencies that society has found useful in the upbuilding of character and self-reliance in its citizens generally. The same methods of instruction, the same kind but firm discipline, the same diet and exercise and training in the crafts and trades that is found so helpful in the development of stalwart manhood in our schools and colleges, and such excellent preparation for life in society, will produce changes in habits and character no less marked when ap-

plied to the population within the walls of our prisons. Especially is this true when these means of reformation are applied to the younger elements of our prison population.

That the conclusions here reached are true is proven by actual experience. Where even a minimum of attention is given to reformatory measures, hard labor being about the only reformatory agency used, a considerable number of men are reformed and go out to live honorable lives. Where the institution is organized on distinctly reformatory lines the percentage of reformations is much greater. The statistics of the New York Reformatory, at Elmira, for a period of thirty years and more, show that more than three-fourths of the men who are sent there are permanently reformed. In the report for 1908, Superintendent Joseph F. Scott says: "We have never been able to trace as many as ten per cent into prison again. This may be assumed as the maximum. Perhaps ten per cent more become otherwise a public burden. Seventy-five or eighty per cent become self-supporting, and honest enough to permanently keep out of jail. By no means a few achieve substantial success and become estimable citizens."¹

If, then, the criminal may be reformed we are brought to a consideration of the very important question of the methods and instruments to be used in effecting the desired end.

3. *How May a Penitentiary Be Made Reformatory in Character?*

It may as well be stated once for all that *character-building within prison walls is accomplished by precisely the same means and instrumentalities that are useful in character-building without prison walls*. Human nature is not changed by the fact of incarceration. Treatment that will brutalize and harden the boy or young man and fix him in his evil ways, when at liberty, will brutalize and harden the criminal after he has lost his liberty. If, then, we would reform the criminal we must look for the character-building agencies and influences used in the home, the public schools, the church, and the college—all institutions whose chief function is the development of character and the training of the future citizen.

¹Report, 1908, p. 20.

a. *The Prison Staff.*—Character building is far more a matter of example than of precept. It is, therefore, a matter of fundamental necessity, in reforming the criminal, that the prison staff be composed of men and women who by both precept and example are able to inculcate the great lessons of self-control and self-respect which lie at the foundation of all moral development. Society requires a high standard of mental and moral training in the teachers it selects to take charge of the public schools, and no college in the land could hope for patronage or popular approval if its faculty was composed of men and women who were deficient in character or who had not had thorough preparation in the branches they were expected to teach. No amount of rules and regulations and restrictions will make a college effective in the development of character and efficiency, unless the members of its faculty are both highly moral in character, and highly efficient in their work, through years of special training and painstaking preparation.

So it is with a prison staff. Every member of the staff, from the highest to the lowest, should be chosen with as much care as teachers are chosen, and with a special view to the services they are to render. Every contact of the criminal with the agents of society should result in his physical, mental, or moral uplift. That society should employ men who curse and abuse and brutalize these disarmed unfortunates, wards of the state, is a crime that will not be tolerated by a civilized community, when once its attention is directed to the abuse. The superintendent should be a man, not only of high character and right motives, but of special training in the science of penology, as well as a man of practical experience in administering penal institutions. The same is true to a less degree of all other members of the staff. Political considerations should no more enter in the selection of prison officials than in the selection of the president and faculty of a university. In either case such considerations work nothing but evil, and that continually.

The importance of having a prison staff composed of people of high character and ability was recognized by Captain Thomas J. Goree, who was connected with the Texas penitentiary system for twenty-two years. In his official report as superintendent, in 1890, he said: "The chaplain alone must not be relied on to make the depraved and crooked grow straight and symmetrical, but every

officer of the prison, from superintendent down, must take part in the work if much is to be accomplished."

b. *Forms of Instruction and Discipline.*—Next in importance to the personal character and qualifications of the prison staff, which are absolutely fundamental, is the kind of instruction and discipline to be given the criminal. It has elsewhere been pointed out that the criminal is in a large majority of cases an abnormal person, defective in one or more important particulars. To be effective in reforming the criminal, the instruction and discipline given should be suited to the needs of the individual. Those defective physically should be put through a course of physical training, setting up exercises, military drills, and labor suited to their strength and powers of endurance. "The first thing we try to do," says the report of the Elmira Reformatory for 1908, "is to give them sound and healthy bodies. Not only is a sick or feeble man prevented from earning an honest living but his infirmities affect both his mental capacity and his moral nature, particularly the latter. There are two physicians at Elmira and another at Napanoch, all able men, devoting their entire time to the inmates of their respective institutions. Acute diseases are cured, chronic diseases alleviated, and the laws of health taught, exemplified and enforced.

"At Elmira those who are strong enough to stand it, are placed in the 'squad' of the military organization and daily put through vigorous setting up exercises, such as are used in the United States army to make soldiers, accompanied by the manual of arms and marching. Others, not at first equal to this, are formed into gymnasium classes and given calisthenic exercises, carefully designed to build up the whole body. The tuberculous, who cannot do either of these things, are segregated from the others, and kept all day in the open air, where many of them recover.

"The food, though very simple, is abundant, well prepared, and carefully selected to secure a scientifically balanced ration. Nothing is allowed to be added to it from outside sources except that relatives or other friends of prisoners who are allowed to visit them here may on such occasions bring the inmates they visit a small quantity of fruit. Tobacco, and, of course, alcoholic beverages, are prohibited. These things, with enforced regular habits, accomplish wonders. Few contract disease in the institutions and the

great majority gain rapidly in weight and improve in appearance till they seem like different men. This lays the foundation for other kinds of improvement."

Not only should the prison discipline look after the physical man, but there should be a no less carefully organized system of instruction in all the elementary branches of a good English education. Especial attention should be devoted to subjects calculated to emphasize the duties of citizenship, history, civil government, and practical ethics. It is all well enough to teach illiterates to read and write, but the main reformatory influence to be derived from school work comes from the study of the more advanced subjects where the prisoner is supplied with new food for thought and where he gets a broader outlook on life and is brought to see the relation that the individual bears to the social whole.

In carrying on such a prison school it will be found that the more intelligent and educated prisoners can be organized into normal classes and used in instructing the more elementary, thus developing character in them and at the same time reducing the cost of teachers to the state.

Possibly of even greater importance than book knowledge is the training that should be given in the trades. There should be well equipped shops for instruction in manual training, accompanied by specialized training in a trade suited to the mental and physical abilities of the prisoner, so that he will be able to earn an honest living when he wins his freedom. No man should be released until he is thus equipped with the means of earning a livelihood. Where the prisoner comes from the city and expects to return to the city, the time spent in farm labor will be of no practical value to him. He should be taught a trade or an occupation suited to his situation and station in life. At Elmira, instruction is given in twenty-nine different trades.

It hardly need be said that careful attention should be given to the moral side of the criminal's education. But this moral training can better be given incidentally through contact with the prison staff in shop and school-room, than by any direct attempt at moral instruction. The value of chaplains and sermons may easily be overestimated, though the religious appeal may be very effectively used along with the other agencies of reform. The

religious instruction, however, should be in the nature of a rational appeal to better living, and not of the emotional type, for one of the weaknesses of the criminal character is an emotional instability which drives him from one extreme to the other and tends to deprive him of that self-control which is necessary for life in society. The whole atmosphere of the prison should be sufficiently moral to transform the prisoner's character and prepare him for free contact with his fellowman.

c. *Labor—Its Uses and Abuses.*—The reformatory value of labor is very great, when not excessively severe, and no prison system should fail to make use of this agency. If not too prolonged or exhaustive in character, labor conduces to the health of the prisoner and keeps his hands and his mind busy, and, therefore, out of mischief. It may also be made remunerative to the state and thus help to reduce the expense of caring for the prison population.

It is at precisely this point, however, that we encounter the greatest temptation in the management of a penitentiary system, the danger of transforming it into a machine for money making or money saving, instead of a hospital for the cure of social disease. The work on the farm or in the factory or at the furnace is dangerously prone to encroach upon the time that should be given to the mental and moral regeneration of the prisoner. Those directly in charge are always anxious to make a good financial showing, and the profit and loss account assumes in their minds a prominence out of all keeping with its actual importance.

The danger of converting a prison into a money making machine instead of an institution for the reformation of the criminal was pointed out by Superintendent T. J. Goree, of the Texas penitentiaries, who said in his report for 1890: "We reluctantly confess that heretofore not much has been accomplished toward the reformation of criminals in Texas. Even in the prisons proper (as distinguished from the lease camps) not sufficient attention has been given by prison officials to this important requirement of the law (the reformation of the criminal) *because their time is monopolized with other duties. We are looking too much after financial success rather than moral reformation.*"

Out of this desire to make a profitable use of the prisoners'

muscle, has grown one of the worst abuses that has ever existed in connection with the penitentiary systems of this country, the practice of selling the labor of the convicts to the owners of farms, railroads, mines, and other such industries. In many cases, as in the Southern States at the close of the Civil War, this lease or contract system seemed to be a necessity. With the return of peace these states found themselves with a large criminal population on their hands—larger by far than ever before as a result of the violent times through which they were passing—and with prison facilities wholly inadequate to meet the demands. Bankrupt, as they were, these states, realizing the necessity of putting their prisoners to work, turned to the lease system as the quickest and easiest way out of their difficulties. But the sale of so much labor proved very profitable and it has been with great difficulty that the law-makers have been induced to surrender this source of income and find employment for the prisoners upon the state's own lands or in industries within the walls of the penitentiaries.

The evils and abuses of the lease system are so numerous and so great that they need not detain us here. No man of intelligence who knows the facts has ever defended the system. It has been condemned time and again by penitentiary officials and legislative investigating committees in practically all the states where it has been practiced, and, as a result, it has been abolished in nearly all the states of the Union. The attitude of those citizens and public officials in Texas who have had an opportunity to know the actual conditions in the lease camps and the general baneful effect of the system may be understood from the following quotations, from official reports and public addresses. The board of penitentiary commissioners and the superintendents have almost without exception urged the abandonment of the lease system, and in their report for 1902 the commissioners say: "A large majority of the abuses which have arisen in the prison management . . . are not only attributable to, but are the direct and logical results of, the custom of hiring convicts to be worked outside the penitentiary walls." Superintendent Herring in his last biennial report said: "I am opposed to the lease and share system, and recommend that it be abolished." The recent legislative investigating committee condemned the system in unmeasured terms, while the legislative

committee of 1901 said: "It is our conviction that the lease system is a disgrace to the state and ought to be abolished." The late Judge John N. Henderson, for many years a member of the state's highest criminal court, after a personal inspection of a number of the lease camps, said in an address delivered before the National Prison Association, then in session at Austin: "From such camps as our state and county convict farms are recruited the criminal ranks; from such schools are turned loose upon society the assassins, cut-throats, rapists, and murderers that infest the state."

While the use of labor as a reformatory agency is especially subject to abuses and the desire to make it remunerative to the state is apt to overshadow the real purpose for which a penitentiary system is established, yet its curative value is so great that it must be included as one of the essential elements in the organization of a reformatory institution. But as stated above it should not be allowed to encroach upon the time that the prisoner should give to the other important reformatory activities.

From what has now been said it would follow that every prison should be equipped with an able staff of officials, physicians, and teachers, specially trained in their work and as far as possible experienced in the handling of the deficient and derelict classes. It should be provided with buildings and books and machinery for developing the mental and moral side of the prisoner's character and for equipping him with knowledge of a useful trade by which he can maintain himself and his family after his release from prison. Lastly it should be supplied with land and industries in which a portion of the prisoner's time each day may be profitably devoted to good hard physical labor. An institution so equipped and managed will return a large majority of the prisoners to society prepared to live honest lives. Such an institution will not be a school from which "are turned loose upon society the assassins, cut-throats, rapists, and murderers that infest the state," as so many of our prisons as well as convict camps now are.

Another important factor, one of the most important of all, in converting a mere detention prison into a reformatory agency, is the indeterminate, or indefinite, sentence. The importance of this subject demands that it be treated under a separate head.

4. *The Indefinite or Indeterminate Sentence and Parole.*

a. *The Principle of the Indefinite Sentence.*—According to democratic doctrine the government should never interfere in the private affairs of the individual unless there is some public purpose or public end to be gained thereby. It is asserted that the state should not interfere with the freedom of the citizen to come and go so long as his conduct does not interfere with the rights of others. But when an individual conducts himself in such a way as to injure others, it becomes the duty of the state, in order to preserve the peace of the community, to interfere and exercise such restraint upon him as may be necessary to protect others from further injury. It follows, therefore, that the object of imprisonment should be the protection of society from one who has shown himself to be dangerous. The fact that he is a person of dangerous character and is, therefore, likely at any time to produce further injury to others makes it necessary for the State to restrain him and deprive him of his liberty to come and go at will.

If, then, the state should imprison the man who has shown by his conduct that he would be dangerous to others if left at large, how long, let us ask, should his confinement continue? The answer is not far to seek. *The man who has shown by his conduct that he is dangerous to society should be confined in prison, and his confinement should continue so long as he continues to be dangerous.* If the protection of society demands his confinement for a period of six months, or a year, or ten years, because he is dangerous to society, it demands the continuation of his confinement until he has ceased to be dangerous to society.

This proposition is so plain and simple that it scarcely seems necessary to offer arguments to sustain it. But when we look about us we find that society is still trying to mete out so-called justice, that is, to repay the criminal in his own coin. We still act on the principle that the criminal has injured society and he must be injured in return. We strike a rough estimate of the supposed criminality of each crime and give the criminal two years, or ten, according as he has chanced to commit this crime or that. At the end of his term we turn him loose without even stopping to inquire whether or not he is still dangerous to society. As well might we

cage a man-eating tiger for a year and then turn him loose more bloodthirsty than before.

The indefinite or indeterminate sentence should be applied to all criminals. Its aim is not retribution nor deterrence, though both these ends may be accomplished incidentally by its application. Its main purpose is to protect society against the criminal. This it accomplishes by locking him up until he is no longer dangerous to society, or if he refuses to be reformed, by keeping him in perpetual confinement. It regards him as a defective, a ward of the state, and treats him as such. His case is closely analogous to that of the insane man. The madman is tried and sentenced to the asylum for the insane, not for one year or ten years, nor to punish him for any previous acts of violence he may have committed; but the safety of society demands that he be confined until cured, even if it requires the remainder of his natural life. His previous acts have nothing to do with the length of his confinement. Their only importance is the evidence they furnish as to his mental unsoundness. And just so it should be with the criminal. The one is a mental defective, the other a moral defective. Both alike are dangerous to the state and should be committed to the care of experienced specialists and kept there until cured.

b. *Benefits of the Indeterminate Sentence.*—One great benefit to be derived from the indeterminate sentence is the change in the attitude of the agents of the state toward the criminal, and in the attitude of the criminal toward the agents of the state and toward the measures used to accomplish his reform. At present the prison warden is charged with the duty of guarding the prisoner and keeping him securely until the time comes for his release. The warden is then relieved of all responsibility for his future conduct. Under the indeterminate sentence the warden and his assistants are charged with the responsibility of preparing the criminal for future citizenship. In the one case the warden is a guard and a taskmaster; in the other, he becomes a teacher, a sympathetic and helpful guide to the prisoner in his efforts to regain his liberty by preparing himself to take his place as a self-controlled and self-supporting member of society. The one requires the qualities of a Roman soldier; the other is a task for the trained specialist only, and demands the highest qualities of head and heart.

But the change in the attitude of the criminal is even greater. Under the definite sentence, he does just as little as possible except to brood over his wrongs and count the days until his term shall end. The whole situation tends to make him regard the warden and guards as his special enemies and he sets his will squarely against theirs and resists all efforts to effect his reformation. But under the indefinite sentence his destiny is placed largely in his own hands, and he soon sees that there is something for him to do, that he must win his own release, and he comes to regard his instructors as his best friends. Dr. F. H. Wines, for twenty-five years secretary of the Illinois Board of Charities and assistant director of the last census, declares that nothing is so potent to convert the prisoner's will, to win him over, to make him willing to receive the instruments of reform, and even to apply them in his own case, as the indeterminate sentence. "Hope," says he, "springs eternal in the convict's breast, but it ordinarily assumes the form of a vague expectation of a pardon, or of a favorable chance to escape. If he can be convinced that these anticipations are fallacious, but that he will be released as soon as it shall become apparent to the officers who have him in charge that society has no longer anything to fear from him, and that he can convince them of this fact by his own conduct in prison, from that moment his will is gained and the rest is comparatively easy. As Maconochie expressed it, 'When a man keeps the Key to his own prison, he is soon persuaded to fit it to the lock.'"

In line with this argument is the opinion expressed by Supt. Joseph F. Scott, of the New York State Reformatory at Elmira. In his report for 1908, he says: "The old system was like placing a prisoner in one end of a horizontal tube through which he would drift, coming out at the other end in a certain definite time, unless he was fortunate enough to slip through the side gate of pardon; no effort of his own bringing him to the exit any sooner. The reformatory system places this tube vertically instead of horizontally, and under the incentive of the indefinite sentence, compels the prisoner to reach the top by his own efforts, regaining his freedom by so doing. The reformatory system compels development through constant manual work, study and training, so that when the prisoner reaches the top of the perpendicular tube, he is a very different

product from the prisoner drifting through the horizontal one. With this view, the reformatory system provides the gymnasium and military organization for the physical development and training of the prisoner, a school of letters for his mental quickening, and religious and ethical instruction for his moral awakening, together with trades classes for his industrial equipment.

"The reformatory system aims to do for the criminal, in an intensified form, what society does for the normal child in the making of a useful citizen. Under the pressure of the indeterminate sentence, it is able to induce strenuous effort on the part of the criminal, so that he may be liberated, with safety to the community, in a shorter time than under the old system."

c. *Objections to the Indeterminate Sentence.*—"But," says one, "such a system is unjust. A man who has committed some heinous crime may secure his release after a few months of confinement, while another might be held many years or even for life for some petty offense." It is true such a thing might happen. But why should the one still be confined when he has given satisfactory evidence that he is now ready to lead the life of an honorable citizen? Or why should the other be released upon society when he has shown no disposition to lead a different life from that he led before his incarceration? If he was dangerous then, he is dangerous now, and should be restrained. More than thirty years ago, Superintendent Brockway, of the Elmira Reformatory, announced the great principle that lies at the basis of all true prison reform: "Persons whose moral depravity makes them a public offense should be committed to properly organized institutions until they are cured." This principle was adopted as part of the creed of the National Prison Association at its first session in 1870 and has hardly been seriously questioned by a scientific penologist from that day to this. The character of the crime committed is a matter of small concern so far as the length of confinement is concerned. Its only use is to indicate the kind of treatment the prisoner should receive while confined. No person dangerous to society should be allowed to run at large, and no person should be restrained when he has given evidence that he is ready to lead an honorable life.

There is another objection which is usually raised and which constitutes the stronghold of the opposition to the system of rational

imprisonment. "How can the indeterminate sentence be made determinate? Where is the wisdom, the knowledge of hearts, the power to read character, the insight into motive, sincerity, strength of will, the eye to pierce all disguises, to detect hypocrisy, to recognize manliness, to distinguish conscience and honest purpose from pretense and cunning? I confess that the decision when to terminate the sentence in each individual case is one of the most difficult which can be imposed on the human mind. To make it always without error is not in the power of any man or body of men. The reformatory method with criminals will never be administered without errors, and such errors must work hardships. . . . The force of the objection must be admitted without reserve. It is a fearful necessity that is thrown upon the state to exercise such a prerogative through fallible agents."

"But," says Mr. Charlton Lewis, an eminent penologist of New York City, "it cannot be too emphatically asserted that the objection is not to the indeterminate sentence as a method, but to every method of restraining criminals. If imprisonment must be practiced, somebody must be vested with the power to decide who shall be imprisoned and how long. Assuming the necessity of the restraint, human minds capable of error must assign and administer it. Observe, then, that the objection in question applies with a thousand-fold more force to the traditional system of retribution than to the scientific system of reformation. If students of humanity trained in the work of searching the character, stimulating the better motives, and watching for the growth of responsibility and conscience, who are in daily, hourly, intercourse with their wards for the sole purpose of preparing them to be free, may still be deceived in them, what shall we say of the judge (or the jury, as in Texas), who sees the prisoner for an hour or a day at his bar, and whose knowledge of him is carefully limited to the single act of which he is accused? The more familiar we are with the practical work of penal jurisprudence, the more irresistibly shall we conclude that, while the difficulty of fair and effective administration will always be felt under any system of law, that difficulty amounts to utter impossibility under the current system of retribution, and is infinitely diminished under the reformatory plan. Thus the objection so often urged against the indeterminate sen-

tence and its corollaries, becomes, when candidly examined, an unanswerable plea for its adoption."

d. *Application of the Indefinite Sentence Elsewhere.*—People are naturally slow to adopt anything new that is offered unless it has been tried and approved elsewhere. The indefinite sentence is not entirely new and untried. The pardoning power in the hands of the executive and the practice of shortening the term of prisoners for good behavior are in a very crude way applications of the principle of the indeterminate sentence, and show that the need has long been felt. In one form or another the indeterminate sentence is in use in England, France, Japan and India among foreign countries, and in Massachusetts, New York, Ohio, and possibly other states of the Union. In New York, the law governing the Elmira and Napanock reformatories provides for an indefinite sentence in every particular except that no person can be detained by the prison authorities for a longer time than the maximum term fixed by law for the crime which the prisoner has committed. This law has been tested for nearly forty years and the only changes urged by the men who have administered it and watched its beneficent results are that the limitation as to the duration of the sentence be removed and that the law be made to apply to all criminals as well as to those sentenced to Elmira and Napanock.

Not only has the indefinite sentence been tried in other states, but it has also received a substantial recognition at the hands of the Texas Legislature. The law passed by the Thirty-first Legislature for the reorganization of what had been known as the State Reformatory, at Gatesville, provides that boys sent to that institution shall be sentenced for a period not less than two years nor more than five, leaving the officials of the institution free to terminate the sentence when in their judgment the good of the boy shall demand it. To this may be added the recommendation of the recent legislative investigating committee, which urged the adoption of the indefinite sentence without limitation as to the age of the criminal or the duration of the confinement.¹

e. *Parole or Conditional Release.*—An important adjunct of the

¹It is of interest to note that the indefinite sentence was strongly recommended by Superintendent Goree of the Texas Penitentiaries just twenty years ago. See his report for 1890:

indefinite sentence is the parole system by which the prisoner is allowed to go free on his parole, on his promise to avoid evil associates and haunts of vice, to follow his calling regularly, and report at frequent stated intervals. If he keeps his promise for the required length of time, a year or two years, thus giving further evidence that he is reformed and is strong enough to stand alone, his release is made absolute and he goes forth a free man. If he fails to keep his promise by falling into bad company and bad habits or refusing to report at proper intervals, he is again apprehended and recommitted to prison without a new trial and his indefinite sentence is resumed.

Such an arrangement is almost an essential in any reformatory system, for no staff of officials, however carefully selected, can avoid making mistakes. A man may give every indication of being reformed when he really is not, or is too weak to resist the temptations of life on the outside. The parole system furnishes an opportunity to see whether the promises made by his good prison conduct are going to be carried out under the normal conditions of freedom. No prisoner should be released until a position of some sort is secured for him and as far as possible he should be sent to some place other than his former residence, where he would be apt to fall in with his former evil companions. His employer or some other person should be secured to advise with him and indorse his weekly or monthly reports, and if necessary make supplemental reports to the prison authorities.

The parole system has been adopted in one form or another in a large number of states of the Union and in many foreign countries, but in a very few cases has it been made as serviceable as it might be on account of the fact that machinery for applying it, especially for keeping track of persons paroled, has not yet been completely developed. Texas adopted a parole law for the penitentiaries in 1905, and in 1909 a similar measure was provided for boys thereafter to be released from the State Institution for the Training of Juveniles, at Gatesville.¹

¹See General Laws 1905, p. 33, and General Laws 1909, p. 106.

5. *Substitutes for Short Terms of Imprisonment.*

a. *Evil Effects of Short Terms of Imprisonment.*—Imprisonment is not a panacea for all crimes. There is nothing inherently reformatory about it, and it is only with great difficulty and the expenditure of much money for teachers and equipment that a prison can be made a genuinely reformatory agency, even under the most advantageous conditions, that is, when the prisoner is turned over to the warden and his assistants for an indefinite period of time. Under less advantageous conditions when the reformatory agencies have but a short time in which to work, the percentage of reformations is very small, and many prisons and county jails may not inappropriately be termed schools for instruction in crime. Victor Hugo said: "What is the name which criminals give to the prison? The 'college.' An entire penitentiary system issues from that term."

In line with this view as expressed by Hugo is the opinion of the late Charles Dudley Warner, who said: "The state is to a certain extent responsible for the criminal class, for it has trained most of them, from youth up, through successive detentions in lock-ups, city prisons, county jails, and in state prisons and penitentiaries on relatively short sentences under influences which tend to educate them as criminals and confirm them in a bad life. That is to say, if a man once violates the law and is caught, he is put into a machine from which it is very difficult for him to escape without further deterioration. It is not simply that the state puts a brand upon him in the eyes of the community, but it takes away his self-respect without giving him an opportunity to recover it."

The short term of imprisonment possesses all the vices and none of the virtues of the long term or the indefinite sentence. It robs the youth or young man of his self-respect. It brands him in the eyes of the world as a "jail-bird." It brings him into contact with the hardened criminal and the work of instruction in the "college" begins. Ferri asserts that many of the most shocking crimes are planned in prison, and, under the instruction of his fellow prisoners, the youthful criminal advances rapidly in his knowledge of the arts and devices of his profession.

In favor of the jail sentence or short term of imprisonment

practically nothing can be said. It protects society against the detected criminal for only a brief period and then releases him more carefully trained in crime and more skillful in avoiding apprehension than ever before. Its deterrent effect upon others is not great; in fact it is found in the great cities that during the winter months not a few of the poorer classes will commit petty offenses in order to secure free board and clothes for a few months within the prison walls. The shortness of the term prevents any attempt on the part of prison officials to begin a course of reformatory treatment. It may, therefore, be stated as a cardinal principle of prison science that *the penalty of imprisonment should not be inflicted in any case if a practicable substitute can be found, and that, when it is found necessary to make use of imprisonment, the term should be indefinite, or, at all events, long enough for the reformatory processes to take place.*

If the short term of imprisonment and the jail sentence are to be avoided, it is necessary to find substitutes for them. A few proposed substitutes will be mentioned and briefly discussed in passing.

b. *Probation and the Suspended Sentence.*—A very useful substitute for imprisonment, especially for the younger criminals and first offenders, is the probation system by which the case against the accused is continued by the court, upon the promise of the offender to mend his ways and make reports to the court or probation officer. In the case of the suspended sentence the trial proceeds to conviction but the judge has power to suspend the sentence and release the prisoner upon parole, without even sending him to prison. In either case "the offender is released on promise to maintain good conduct, and the probation officer visits him or her once each week and makes certain that the advice of the judge is followed. Industrial occupation is secured at home, or with an employer, or in a private institution; and a relation of friendly guidance and assistance is maintained. Thus an offender may be reformed, or prevented from becoming a habitual criminal, by personal influence and help, without losing time from employment, without being cut off from family and friends, and without incurring the reputation of a 'jail-bird.'"¹

¹Henderson, *The Dependent, Defective, and Delinquent Classes*, p. 304.

The suspended sentence and the probation system are extensively used in the state of New York, and, according to official reports, with very good results. About one-sixth of the persons convicted of crime by the higher courts in that state are not sent to prison at all but are released under suspended sentences, and put under the supervision of city and county probation officers. It is applied to adults as well as to juveniles.

Under the short term sentence the husband and father is frequently locked up in idleness for a few weeks or a few months while the members of his family are left to look out for themselves as best they may, and out of it all in most cases comes a more hardened criminal than before. Under the probation system the offender is required to remain with his family and not only follow his calling but use the returns from his efforts for the support of those dependent upon him.

c. *Fines and Reparation.*—Fines have long been made use of as substitutes for short term imprisonment, the fine being regarded as a compensation for the injury done to the state. But, strange to say, until quite recently no one in modern times seems to have thought of requiring the wrong-doer to compensate the person injured for the damages he has suffered. It is true that the injured person is allowed to sue in a civil court for the damages he has sustained, but this is a separate action, expensive and uncertain in its outcome, and even if it terminates favorably, the wrong-doer usually has no property subject to seizure, and, as a result, the judgment is worthless. The plan here proposed would eliminate most of these difficulties. It would be the business of the criminal court to determine first whether the accused were really guilty, second, what damages the injured party or the state, or both, had suffered, and third, to assess against the offender a fine sufficient to cover the damages both to the injured party and to the state.

The principle of reparation or restitution is inherently just and met with a very early recognition among civilized people. The Bible is full of it. "If a man shall steal an ox, or a sheep and kill it, or sell it; he shall restore five oxen for an ox, and four sheep for a sheep."¹ "And Zaccheus stood, and said unto the Lord: Behold, Lord, the half of my goods I give to the poor; and if I have

¹Exodus 22:1.

taken anything from any man by false accusation, I restore him fourfold."¹ Our Saxon ancestors, too, recognized and made use of the principle of reparation long before any system of fines to the state was thought of. For each wound or other injury inflicted by one person upon another a money payment, called composition, had to be made to the injured party, or to his family in case of his death, the amount varying with the seriousness of the injury inflicted. So strongly is the doctrine of reparation urged by many students of penology that we find some of them proposing that the state shall insure the citizen against injury at the hands of others. The citizen pays taxes to secure protection from violence. The tax thus paid is in the nature of an insurance premium, and, for its failure to furnish the protection, the state should respond and then look to the offender to recoup itself for the outlay. Especially strongly do they advocate such restitution by the criminal, through the state, in cases of murder and other such crimes, where the family of the victim is left destitute. It is better for the loss to be borne by the wrong-doer or by the community as a whole than that innocent women and children should be crushed by the blow.²

¹Luke 19:8.

²The view here presented is strongly urged by Ferri, *Criminal Sociology*, 223, as follows: "In fine, citizens pay taxes in return for the public services of the State, amongst which that of public security is the chief. And the State actually expends millions every year upon this social function. Nevertheless, every crime which is committed is followed by a grotesque comedy. The State which is responsible for not having been able to prevent crime, and to give a better guarantee to the citizens, arrests the criminal (if it can arrest him—and seventy per cent of *discovered* crimes go unpunished). Then, with the accused person before it, the State, 'which ought to concern itself with the lofty interests of eternal justice,' does not concern itself with the victims of the crime, leaving the indemnification to their prosaic 'private interest,' and to a separate invocation of justice. And then the State, in the name of eternal justice, exacts from the criminal, in the shape of a fine payable into the public treasury, a compensation for its own defense—which it does not secure, even when the crime is only a trespass upon private property!"

"Thus the State, which cannot prevent crime, and can only repress it in a small number of cases, and which fails accordingly in its first duty, for which the citizens pay it their taxes, demands a price for all this! And then again the State, sentencing a million and a half to imprisonment within ten years, puts the cost of food and lodging on the shoulders of the same citizens, whom it has failed either to defend or to indemnify for the loss which they have suffered! And all in the name of eternal retributive justice.

"This method of 'administering justice' must be radically altered. The State must indemnify individuals for the damages caused by crimes which

Without pushing the doctrine to the extent just indicated, it is believed that reparation can be made a valuable substitute for imprisonment in many forms of crime. Its inherent justice will commend it to courts and juries, and tend materially to lessen the number of cases of delay and miscarriage of justice, the "failure of the court-house" of which we hear so much. Such a punishment will not rankle in the mind of the criminal as do harsh and unnatural penalties, for he will see its justice and recognize the fact that he has brought it upon himself, that it is a natural consequence of his conduct.

In New York, where the principle of reparation has had several years of practical test, it is made to go hand in hand with the suspended sentence and the probation system. In cases where a man is unable to pay his fine to the state and damages to the injured party at once, or his family would suffer if he should be forced to pay it in a lump, he is put on probation and allowed to pay it on the installment plan, a dollar or two per week. The probation officer keeps in touch with the offender and makes the weekly collections. Thus the wrong-doer is taught a lesson, his victim is repaid for the injury he has suffered, and at the same time the offender's family is not left without support. In addition to all these desirable results it is claimed officially that the system is quite economical, the care and supervision of the offender while at large costing the state on an average less than one-fifth of what it would cost to lock him up in a jail, reformatory, or penitentiary.

A few examples will show the workings of the system of reparation and probation. A young man in central New York who had never before been arrested, stole a cow which he later sold and which could not be recovered. Neither imprisonment nor a fine would have repaid the original owner of the cow for his loss. The court, therefore, placed the man on probation under an order that he pay the full value of the cow to its original owner in installments.

Another case. "In 1901 a probation officer received a twenty-

it has not been able to prevent (as is partially recognized in cases of public disaster), recouping itself from the criminal. . . . For we believe that if the individual ought to be always responsible for the crimes which he commits, he ought also to be always indemnified for the crimes of which he is the victim."

six-year-old man on probation, who had already served a sentence for burglary and who was at the time under conviction for grand larceny. The man was a loafer and a drunkard and so depraved that his wife could not live with him. Owing to his record the district attorney and others who knew the defendant scouted the possibility of his reformation and urged the court to impose a heavy sentence, but, since the court felt that there was something still left in the man to build upon, it placed him on probation. The probation officer secured work for the man, and by persistent efforts brought about a reunion with his family and developed an ambition to do right. For upwards of seven years the man has been working faithfully and is a respected citizen."

One other case may be given. "A man who had stolen a load of whisky valued at \$216 was placed on probation upon the condition that he refund its full value. He had become drunk after stealing the whisky, and in turn the whisky was stolen from him, which he was unable to recover. While on probation the man kept at work and made weekly payments from his earnings during a period of two years, until the original owner of the property was fully compensated for his loss. Had the defendant been committed to an institution for the theft, he might have fallen into associations which would lead him to continue in crime, and the owner of the property would not have been compensated for his loss."¹

IX. SUGGESTIVE OUTLINE FOR A COMPLETE PENAL SYSTEM.

It is difficult, one might almost say it is impossible, to legislate wisely on any part of a system for the social treatment of crime, unless the system as a whole is kept constantly in view. Without such a comprehensive view of the subject by the legislator, whatever symmetry may be developed in the penal system must be attributed to a happy chance rather than to intelligent design. But the difficulties and intricacies of the subject are so numerous and the importance to society of a well ordered system is so great that it would be folly to leave the solution of the problem to chance or to haphazard, ill-considered legislation.

It seems appropriate, therefore, to present in brief form a

¹Second Report New York State Probation Commission, 1908, pp. 11-14.

scheme for a complete system of crime-prevention and penal administration. It is not pretended that the scheme here presented is anything more than a suggestive outline. It will doubtless be found defective and open to criticism in various particulars, but, if it shall provoke thought and discussion and prove helpful in working out a rational and effective method of dealing with crime and the criminal, its purpose will be fully accomplished.

1. *Preventive Measures.*

There are two ways of dealing with the social disease called crime, just as there are two ways of dealing with physical ailments. Under the old method the physician was concerned almost entirely with the cure of disease, while little attention was paid to good sanitation and the laws of hygiene. But the world is gradually coming to see that it is better and easier to preserve the health of the community and of the individual by proper sanitary measures and intelligent obedience to the laws of health than it is to stamp out a plague in the community or to restore the body to health when once the germs of disease have found a lodgment in it. Not less true is it that society should concern itself with *preventing* crime more than with *punishing* it. In no department of human affairs does the old adage apply with greater force than that an ounce of prevention is worth a pound of cure. He is a social benefactor who can cure the criminal of his disease, but greater still is the statesman who can discover the hidden causes of crime and, by removing them, leave the criminal hospitals empty of patients to be cured.

Many measures might be suggested as important means of preventing crime, as an efficient police force, certainty of detection and conviction of criminals, the care of discharged prisoners and their families, checks upon the hereditary supply of bad stock, and a system of registration and identification of criminals. But the most important means of preventing crime are measures tending to improve the general economic and social conditions of the masses of the people, especially of the lower classes, and the development of an adequate system of schools and other institutions for training the rising generation. The limits of this paper will permit only a brief mention of these subjects, by way of showing their importance in preventing the commission of crime.

a. *Improvement of Economic and Social Conditions.*—All students of criminology agree that a considerable portion of the crimes that are committed, especially in the crowded communities of the Old World, are due to economic and social causes, and not to the inherent vices of the population. Of these causes poverty is probably the most important. In the great cities many thousands of people eke out a miserable existence, living on the verge of starvation even in prosperous times. During seasons of industrial depression, when wages fall, or fail altogether, and prices of provisions rise, these unfortunate classes are forced to beg or steal or starve. The statistics compiled by the French Government during the last hundred years, show that crimes against property, such as theft and burglary, increased for the short crop years and decreased when the price of grain was low. That is, the quantity of crime was found to rise and fall with the price of bread. So, too, the winter months with their increase of necessities show an increase in crime over that of the summer months. Many other illustrations might be given showing the intimate connection between the social and economic condition of the lower classes and the commission of crime.

It follows, therefore, that all measures calculated to improve the condition of the poorer classes will materially lessen the quantity of crime. Thus laws that tend to encourage the investment of capital in industries that will give steady employment to labor, so that every man willing to work may find remunerative labor; the readjustment of our methods of distribution, so that the wage-earner will get a fair share of the total product of industry; the breaking up of monopoly conditions and the substitution of competition on the one hand or government control on the other, preventing the accumulation of enormous fortunes and bringing about a more general diffusion of wealth; the wide diffusion of land ownership, thus enabling the largest possible number to own their own homes and feel a proprietary interest in the institutions of the state—these and many other measures that will suggest themselves all tend strongly to better the condition of the poorer classes and lessen the temptation to commit crimes. To this list may be added measures intended to secure better houses and better sanitation in the tenement districts, proper conditions and limitation

of hours for female and child labor, and the development of parks and play grounds to tempt the laborers and their families from their crowded quarters to the healthful exercises and amusements of the open air.¹

b. *Development and Extension of Educational Facilities.*—The most important preventive measures that society can use against crime are agencies devised for the proper training of the rising generation. The experience and wisdom of one generation must be imparted to the next, and the progress of the race depends largely upon the efficiency of the machinery developed for transmitting this accumulated information. The home and the school are undoubtedly the most important agencies yet devised for this purpose. Every anti-social individual, not hopelessly criminal from birth, is a reproach upon society and points unmistakably to a mal-adjustment or an improper development of our institutions for training the young. The home, the church, the school and the rest, have all failed to reach him and to overcome the anti-social instincts of his nature—instincts strongly present in all healthy children, which must be eliminated to fit them for good citizenship.

While the home is not directly under the control of the state, and its conditions and surroundings can be bettered only by such indirect measures as have already been mentioned, the school is a branch of the public service and can be developed to a high state of efficiency, and no civilized community can afford to neglect this important agency. The money put into schools will be largely saved in the decreased cost of courts and prisons. To starve the school is to fatten the jail. It is better to turn the restless energy of the young into right channels than to seek to repress it by harsh penalties.

Not only should the schools furnish moral and intellectual training but they should also train the hand and the eye, and prepare the children of the poor, as well as of those in better circumstances, to earn an honest living. Trades schools, it is believed, will materially help to keep the big boys off the streets and out of mischief.

¹For a more extended discussion of this subject, see Ferri, *Criminal Sociology*, pp. 110-120.

and in this way the amount of juvenile delinquency can be greatly reduced.

It is this view of the educational system as a means of protecting society by preventing the growth of the criminal classes, that furnishes the advocates of a compulsory attendance law with their strongest argument; for without a compulsory law, it is claimed, the poorer classes of the cities from which the criminal ranks are recruited, will not attend the schools and will thus in large measure defeat this important effort at social self-preservation. And it is this view, too, that justifies the practice of placing the burden of the support of the schools upon all members of the community, whether they have children of their own to educate or not.

2. Means and Methods of Dealing With Juvenile Delinquents.

In spite of all preventive measures that may be devised many offenses will be committed, and the necessity will always exist of dealing with the wrong-doer. And this brings us to a consideration of the means and methods society should use in handling those persons who have slipped by the schools and other agencies, or whose anti-social tendencies have resisted all the influences that have been brought to bear upon them. Clearly society must use more radical measures here than are applied to the ordinary person, and the earlier these corrective measures can be applied the better.

In dealing with delinquents of all ages, but especially with youthful wrong-doers, too much care cannot be exercised to avoid aggravating the trouble instead of curing it. In no case should youthful criminals and first offenders be locked up, even for temporary detention while awaiting trial, along with habitual and hardened criminals, for in that case the lock-up is certain to become a training school for crime instead of a corrective agency. And it is highly important that the period between arrest and trial should be as short as possible, for the longer the accused is detained in idleness the greater will be his chances of contamination, the stronger will be his resentment and his hatred of social institutions, and the more certainly will he lose the last remnants of his self-respect. The deterrent effect, too, is far greater when punishment follows hard on the heels of the crime.

In describing the institutions and methods of procedure that have been found most useful in dealing with youthful offenders, we probably can not do better than make some liberal quotations from Prof. C. R. Henderson, of the University of Chicago, President of the International Prison Commission.

a. *"The Court.*—A juvenile court is the central agency in a rational modern system of dealing with delinquent children and youth. The judge should be chosen for his learning, his kindness, fairness, tact, and experience with children. No position calls for higher qualities and finer powers of judgment. The letter of the law carries one but a little way, and the exercise of discretion is of the essence of the plan.

"Juvenile offenders should not be tried in the same court with criminals, but in a separate room and free from the depraving influence of a crowd of vile characters who usually haunt the police trials. A jury may be demanded, but it is ordinarily superfluous.

"Any reputable resident of the state should have power to petition the court and call attention to a neglected, dependent, or delinquent child. The person who has charge of the child may be summoned to appear in the court and give answer to the declarations of the petition.

"To carry out the purposes of the court the judge should have authority to appoint officers to take charge of the child, to watch over its welfare, and to give information for the further action of the court. In some communities these probation officers are paid by a child-saving society without expense to the state; but this seems to be a temporary device. There is no reason why the state should not pay for such service, although co-operation with private societies of responsible persons may be sought.¹

b. *"Admonition.*—In many instances the judge is able to discharge his entire duty to an erring child simply by warning and instruction. He has to deal with ignorant, untaught and undeveloped children. A dignified, impressive, and fatherly lesson, delivered from a position of power and authority, charged with wisdom and kindness, often makes a profound impression on a young per-

¹For a full account of Judge Lindsey's famous juvenile court at Denver, see "The Problem of the Children and How the State of Colorado Cares for Them—A Report of the Juvenile Court of Denver, 1904."

son, and frequently it is all that is necessary to support parental authority and the counsels of school-teachers. Not seldom the parents themselves require such advice and a certain menace of punishment, since their own negligence or vice may be the primary cause of the evil actions of their offspring. If a child or youth can be dismissed with admonition and without a formal record of sentence passed, the evil of a criminal history is avoided and the future is not clouded with this memory.

"Conditional release and conditional condemnation are more severe measures, sometimes made necessary where a law has been violated and the subject is wayward and obstinate. Since a criminal record is thus made it should be avoided, if possible.

"Under either plan the boy can remain at home, go to school, or learn a trade, without becoming an expense to society. As soon as wayward children are confined in a public institution they become a heavy charge, and many parents are only too willing to surrender their offspring to a boarding-school, under police regulation, if they can thereby escape the cost of maintenance and have the boy taught a trade. Indeed, it requires the greatest care to prevent some parents from actually leading their children into lawless acts on purpose to throw their support upon the city or state.

c. "*Fines*.—In certain classes of cases the judge may set a fine, and require the parents or other persons to give security for its payment. Fines are the only form of penalty which do not injure beyond remedy. If the accused prove to be innocent, after a whipping or imprisonment, there is no adequate remedy, the pain having been borne; but a fine can be repaid, if innocence can be established. Fines must be fixed according to the ability of parents to pay; and this requires the exercise of wise discretion and detailed information on the part of the judge. If the fine can be made payable in installments, the burden is not so heavy. The tendency and influence of this method of punishment would be to improve parental care and discipline and enforce parental obligation, and so strengthen the educative value of the family life.

d. "*Detention*.—Children and youth awaiting trial should not be imprisoned, except in aggravated and dangerous cases. Parents may keep them at home, if the family life is suitable for this task;

or voluntary societies may be responsible for them. In every way the child should be kept out of prison; for familiarity takes away the dread of the prison which acts, in some degree, as a deterrent influence on most young persons.

e. *"Day Industrial Schools."*—Following out the principle already insisted on, that imprisonment should be avoided and parental duties enforced by the court, measures should be taken to keep the wayward and vagrant youth in the public schools by some adaptation of the schools to the needs of this class. It has been found that the boys who run away from ordinary book schools and persist in truancy, become enchanted with sloyd and manual training exercises, where their hands are kept busy with something tangible. Special rooms should be set apart for such cases, and the greatest pains taken to help the dull children before they are taken away from home and society to be shut up at public expense for a series of years. This method requires a great deal of thought and care but it is rational, and it is necessary to secure the best results. If the family is too poor to support the children, then assistance from private or public sources, must be provided. The authorities cannot enforce the compulsory education laws where extreme poverty compels the parents to keep their children at home. If the children come starved and weak to school, and thus unfit for their studies, they must be fed, even at the risk of pauperizing the parents.

"A very desirable arrangement is to provide day industrial schools, preferably as part of the public school system, for those children who require such special treatment. The children of these schools live at home at night, but take one meal each day at the school.

f. *"Industrial Boarding-Schools, Sometimes Called 'Parental Schools.'"*—While we insist that parental duty should be enforced to the uttermost, that vagrant and mendicant parent should be punished for sending out their little ones to beg or steal, it must at last be reluctantly admitted that separation from parents sometimes becomes necessary to save the child.

"The best method for such a school includes the following features: a group of separate dwellings, each accommodating not more than thirty or forty boys or girls, under the charge of a

master and matron; a central school, in which manual training and technical instruction are important factors; large grounds with facilities for outdoor occupation and recreation; careful medical supervision, with all the means of building up vigorous and healthy bodies; freedom from bars, grated windows, and all the signs of a prison; sentences not less than three months and not more than two years; payment by the parents compulsory by law, up to the limit of the ability of the parents; with discharge on parole and subsequent watchcare of probation officers; boarding or placing out in new family homes as rapidly as may be, in cases where the home is an unfit place for the child; finally, restoration to normal social conditions at the earliest moment practicable.¹

"Children under ten or twelve years of age should not be sent to such boarding-schools, but should be placed in families to be adopted if severed from the parents, or boarded out and supervised by a responsible society until final disposition of them can be made. The institution should be regarded strictly as a merely preparatory and transitional stage in the treatment even of youth advanced in vicious ways.

g. *"The Reform School.*—An institution is necessary for youth who have committed acts which would send an adult to the state penitentiary, as larceny, arson, stabbing. In consideration of their immaturity, and the hope of their reformation, it is not wise to confine adolescents with old offenders, even for one night, in places of detention. In the lock-up or jail they should be confined awaiting trial, in separate cells, without possibility of communication with others. Their trial should be conducted quietly and without publicity, in a way to avoid making heroes of them in their criminal group. If certain more depraved and hardened cases are excluded from the population, and a firm and wise administration is maintained, the prison forms may be omitted, or greatly reduced. . . .

"The previous history of the child or youth must be studied, so as to adapt discipline and education to its nature and needs. Youths accustomed to the city seldom are willing to go to the farm, and must be taught town trades. Country children may be taught

¹For a full discussion of the merits of the "cottage plan" as here suggested, see the "Report of the Commission to Select a Site for the New York State Training School for Boys," Albany, 1909.

rural occupations. There should be no minute specialization and division of labor, and the effort should be to give general training.

"All teachers should join with the children in actual manual work in order to set an example of the dignity and honor of labor. Fine precepts about honest toil do not come with sincerity and grace from teachers whose hands are never soiled. For this personal influence the cottage group system is far more favorable than the great military camp or barracks found in many places of the older types. In this connection may be added another consideration. 'In every reformatory for boys there are those who have become adepts in crime, and who, like their elders in jails and city prisons, instruct the newcomer in the secrets of criminal practices. For this reason a reform school should be conducted on the cottage plan, and the boys separated into small groups, according to their different characteristics—say not more than twenty in one family.' (Dr. W. P. Letchworth.)

"It must be remembered that these children will not live in houses of luxury. They will meet hardness, plain fare and privation. Therefore, the institutional life must be plain and austere in furniture, while it must not be injurious to health nor offensive to good taste.

"Youths should be taught to earn money, keep strict accounts, buy and sell useful and pretty articles, so as to learn the value of money.

"All juvenile offenders under the age of sixteen years should be regarded as under reformatory education, and not as criminals; the institutions in which they are trained should be called schools, and, logically, should be under the control of the school authorities, and not form part of the prison system. Youths over sixteen years and under eighteen should not be permitted to mingle with those under sixteen."¹

3. Reformatories or Intermediate Prisons.

The means and methods described in the preceding paragraphs are those that have been found most suitable for dealing with delinquent juveniles below the age of sixteen or eighteen years.

¹Henderson, *Dependents, Defectives, and Delinquents*, pp. 324-330.

The intermediate prison is intended for criminals ranging from sixteen or eighteen to twenty-five or thirty years of age. It is not easy to draw a sharp line between these groups, based on age alone. Probably a better plan would be to allow the judge of the trial court to exercise a measure of discretion, and send youths between the ages of sixteen and eighteen either to the boys' industrial school or to the intermediate prison, depending upon their mental and physical development, and the character of the crimes they have committed. In the same way there might be allowed an opportunity for the exercise of discretion in sending men between the ages of twenty-five and thirty to the reformatory or intermediate prison on the one hand, or to the penitentiary on the other.

The need for reformatories or intermediate prisons for young men of the ages mentioned is founded upon the fact that maturity is not reached until about the age of twenty-five or twenty-six years, and up to that time the formative processes are still going on. The average age of college students, who, as a class are primarily engaged in character building, that is, in the development of the physical, mental and moral powers, is about twenty years. They are not ordinarily admitted to college until they reach the age of sixteen or eighteen years, and they graduate all the way up to twenty-five and thirty years of age. On the average, juvenile offenders are less rapidly developed, physically, mentally and morally, than persons brought up under more favorable conditions, and, as a result, the period of tutelage should be extended to a more advanced age than in the case of the ordinary college student.

Probably an adequate idea of the sort of institution the intermediate prison should be may be gained by examining briefly the Reformatory at Elmira, New York, which is universally regarded by penologists as one of the best penal institutions that has yet been developed. This Reformatory began operation in 1876. In that year Mr. Z. R. Brockway, already renowned for his able advocacy of the indeterminate sentence and for his successful work as a prison reformer in New Hampshire, New York, and Michigan, was made superintendent, and this position he held until advancing years forced him to resign in 1900. The present superintendent is Col. Joseph F. Scott, one of the most successful prison administrators in this country. The law provides that criminals between

the ages of sixteen and thirty years convicted of felonies may be sent to the reformatory for not less than one year nor more than the maximum term fixed by law for the given crime. Within these limits the prisoner may be released at any quarterly meeting of the Board of Managers, after an examination before them and upon the recommendation of the superintendent, wardens, and instructors. His release is not absolute, but he goes out on trial for a period of six months, making monthly reports to the superintendent of his earnings and expenditures and his general conduct. If he violates his parole he is arrested and returned to prison without trial; if not he is released absolutely at the end of that time, and is a free man again.

The principles upon which the Elmira Reformatory is founded are admirably stated by Dr. Wines in his book on "Punishment and Reformation," pp. 223-224, as follows: "The great underlying thought in that institution is that criminals can be reformed; that reformation is the right of the convict and the duty of the state; that every prisoner must be individualized and given the special treatment adapted to develop him in the point in which he is weak—physical, intellectual, or moral culture, in combination, but in varying proportions, according to the diagnosis of each case; that time must be given for the reformatory process to take effect, before allowing him to be sent away, uncured; that his cure is always facilitated by his co-operation, and often impossible without it; that no other form of rewards and punishments is so effective, in so many instances, as transfer from one class to another, with different privileges in each; but that the supreme agency for gaining the desired co-operation on his part is the power lodged in the administration of the prison to lengthen or shorten the duration of his term of incarceration."

In carrying out these principles the Reformatory in its organization resembles more a great industrial and technological school than it does a state prison. An effort is made to reach the man and develop him on all sides, morally, mentally, and physically. For his moral instruction, there are the chaplain and the usual religious services, a library full of good books and an elaborate system of rules to which strict obedience is demanded, thus inculcating the great lesson of respect for law and authority. For the mental

development of the convicts, there has been organized a school of letters and a strong corps of citizen and convict instructors. Besides the elementary instruction given to the illiterates who form the great majority, courses of instruction are also given in arithmetic, language, literature, history, ethics, and the nature studies. More than 100,000 square feet of floor space is devoted to this work, and the enrollment for 1901 was 1200 students out of a total average population of 1338 in the prison.

But while good results are being accomplished in these directions it is in the department of physical culture and in the industrial and trades schools that the most thoroughly sound and practical work is being done. A large per cent of the juvenile offenders are shop-lifters and pick-pockets from the cities, whose deficiencies are frequently as much physical as they are mental and moral. They are suffering from lack of physical development; and to meet the demand large gymnasia are provided with ample equipment, tub and shower baths, and swimming pools, where a thousand physical defectives are under the care of competent physical directors. In addition to this all men not physically disqualified are members of the military companies, of which there are sixteen, and are furnished with arms, uniforms, etc., and are required to drill three or four times a week. Uniforms are worn, and stripes, the perpetual reminder of the convict's humiliation, are not to be seen within the walls. All military officers below the rank of captain are selected from the ranks of the convicts, and the prisoners have their own military band.

In the trades school instruction is given in thirty or more different trades and occupations. Many thousands of dollars are invested in the machinery and equipment for these subjects, and a corps of trained instructors are assisted in this work by foremen and overseers chosen from among the convicts themselves. More than 150,000 square feet of floor space is assigned to this department of instruction. The following table, taken from the official report of the Director of the Trades School for 1901 shows exactly what is being done in this department:

	Total number instructed.	Average attendance.	Graduated from trade.	Paroled to trade employment.
Barbering.....	146	66	14	26
Bookbinding.....	54	32	9	5
Brasssmithing.....	29	10	1	4
Bricklaying.....	131	78	2	17
Cabinet making.....	31	14	1	2
Carpentry.....	126	83	10	14
Clothing cutting.....	39	23	8	5
Dynamo tending.....	19	8	..	2
Frescoing.....	79	43	..	7
Hardwood finishing.....	33	29	4	1
Horseshoeing.....	52	22	7	4
House painting.....	39	21	2	5
Iron forging.....	66	32	5	3
Machine woodworking.....	31	14	1	1
Machinists.....	105	46	6	17
Moulding.....	72	33	33	2
Music.....	53	30	6	1
Paint mixing.....	15	8	3	..
Plastering.....	38	23	3	8
Plumbing.....	96	51	7	10
Printing.....	79	37	4	10
Shoemaking.....	36	14	..	4
Sign painting.....	30	16	1	3
Steam fitting.....	39	19	3	6
Stenography and typewriting.....	43	32	..	19
Stone cutting.....	29	13	4	7
Stone masonry.....	41	18	1	5
Tailoring.....	68	30	1	13
Telegraphy.....	21	10	2	1
Tin smithing.....	55	29	4	1
Upholstering.....	61	26	2	4
Not classified.....	14
	1758	908	113	221

4. Penitentiaries and Agricultural Colonies.

To the penitentiaries should be committed criminals of mature years and all repeaters—men, who, having been released as reformed have proven themselves unworthy of the trust reposed in them and have returned to criminal practices. To the penitentiaries also should be transferred the men that persistently fail or refuse to respond to the reformatory treatment given them in the intermediate prisons described in the preceding section. Along with the penitentiaries may be mentioned the agricultural colonies, or state farms, operated in the Southern States of this country, and in warm climates generally where outdoor work can be followed most of the year.

In the penitentiaries, as in all other penal institutions, a careful system of grading and classifying should be followed to avoid placing the younger men, especially first offenders, in direct contact with men schooled in crime and incorrigible or insubordinate

in conduct. Here, too, as in other prisons, there should be a system of marks and credits for good conduct and for progress in whatever school work or trades or industries there may be provided for the inmates, and, as the men show themselves worthy, they should be promoted to the higher ranks, or degraded to the lower where the work is harder, the food plainer and the privileges fewer. It should always be possible for a prisoner by good conduct and diligent application to the tasks placed before him to work his way up through the ranks, and ultimately win his freedom. For this reason the indefinite sentence and the parole system should apply here as elsewhere, and regular machinery should be provided for carrying them into effect.

In the penitentiaries and agricultural colonies, the time of the criminal should be given largely to labor, but not to the exclusion of other forms of discipline. As far as possible the labor should be of such a character as to provide the prisoner with knowledge of a remunerative trade or occupation, so he will be able to stand alone when released. Any excess of his earnings over the cost to the state of his maintenance should go first to repair the damage he has done to the person injured, and second to the support of his own family. Where there are no claims of this sort to be met, the excess should be saved and turned over to the prisoner when he has won his release.

5. *Substitutes for Imprisonment.*

In a well rounded system of penal law and administration there should be as many substitutes as possible for punishment by imprisonment, especially for the short term and jail sentence. This is true because imprisonment is very expensive to the state and is not reformatory in its results unless it is of sufficient duration to allow the prisoner to be put through a thorough course of reformatory treatment. In addition to these considerations, imprisonment breaks down the prisoners self-respect, brands him before the world as a jail-bird, thus placing a stigma upon him which it is nearly impossible for him to live down, deprives his family of his support, and makes no provision for repairing the injury and loss he has inflicted upon the victim of his crime.

Among the substitutes that may be mentioned are the release of

the accused upon probation, or under suspended sentence, and fines to the state and reparation to the injured party. As these proposed substitutes have already been considered, they will not be further discussed at this time.

X. PRACTICAL SUGGESTIONS WITH REFERENCE TO THE PENAL SITUATION IN TEXAS.

In the preparation of this paper it seemed best to devote the greater portion of the space to an effort to set forth the results of the extensive research and experiments carried on by practical prison workers and by scientific students of criminology in this country and abroad, and to leave the intelligent reader to make the application to the conditions that have recently been shown to exist in the penal institutions in Texas. However, as the reform of the penitentiary system is now one of the most important questions before the people of this state and is certain for some time to come to receive much attention at the hands of the press, the public, and the law-maker, it would seem not inappropriate at this time to discuss briefly some of the changes and reforms that have been suggested.

Before taking up these suggested reforms, however, it may be well to call attention to the importance of exercising due care and deliberation in undertaking the reorganization of the state's penal institutions. Any changes that are made are apt to involve the outlay of considerable sums of money for lands and buildings, and will, to that extent, fix the policy of the state for years to come. Expenditures once made are not easily withdrawn and it behooves us to look well before committing the state to any permanent line of penal administration. No action at all is probably better than hasty, ill-considered legislation, based on sentiment rather than upon judgment and sound reason. It is probably a fortunate thing, therefore that the law-makers were not called upon to deal with the matters at once before time had been allowed for the formation of any definite constructive policy, especially in view of the fact that the abolition of the lease system which is generally demanded cannot be accomplished until some other means of caring for the prisoners is provided.

But, while caution and deliberation are necessary, they must not

be allowed to degenerate into timidity or inactivity in dealing with the abuses that have been disclosed, or in effecting such a reorganization as will bring our penal system into harmony with the best thought and practical experience of the age. Texas is too great a commonwealth and occupies too prominent a place among the sisterhood of states to continue a medieval system of penal administration. The intelligent and patriotic citizenship of Texas should join the press in a demand for constructive, far-reaching reform—a demand that will not be satisfied with the discharge of a few offending guards or the reduction in the size of the strap used for punishing convicts, but will insist upon a complete change of policy, by which the reformation of the criminal and the protection of society will be made more important considerations than the making of money for the state out of the labor of the convicts.

1. Reorganization of the Penitentiary Commission.

One of the most urgent needs of the penitentiary system is to remove it from the realm of spoils politics, and, by so doing, to give permanency of tenure to its board of control and to the superintendent and his staff of assistants. Under the present arrangement the positions on the Penitentiary Board and the chief administrative offices of the system are regarded as the legitimate spoils of the Governor's office to be distributed by the successful candidate to his faithful followers as the reward for their services during the campaign. As a result, these important administrative offices are usually refilled by each incoming Governor, and the state is deprived of the wisdom and experience gained by these officers by their two or four years' tenure of office. Thus the state manages its business so that it is constantly served by apprentices—raw recruits taken into the service for a short period, to be discharged about the time they begin to be moderately efficient, and to be replaced in turn by other apprentices as inefficient as the first lot was. Not only does the state constantly call to its service men unqualified for the work they are to do, but, as a result of the shortness of the term of office, it discourages them from any attempt to make a serious study of penitentiary problems or render themselves efficient for the work in hand. Probably few, if any, of the officials of the Texas penitentiary system have ever familiarized themselves with any of the

works on penology, or have ever made a systematic study of the penal institutions of other states, or have attended the meetings of the National Prison Association. One can scarcely be blamed for his failure to prepare himself for a position which may be taken from him at any time, and is certain to be taken from him at the end of a four years' term.

Not only is there no permanency of tenure in the penitentiary service, but there is no head to the system, no one man or board that is responsible for the entire control of the system. Nine different officers connected with the prison system are appointed directly by the Governor, with the approval of the Senate, and are, therefore, entirely independent of each other. These officers are first the three penitentiary commissioners, who are supposed to be in control of the entire system but who cannot appoint or remove or control the action of the other six most important prison officials; second, the superintendent, who ought to control the assistant superintendents, the inspectors, and the financial agent, along with the rest of the staff, but who has nothing to say in their selection or their control or removal; and, third, the two assistant superintendents in charge of the two penitentiaries, the two inspectors, and the financial agent.

To mention such an awkward arrangement is to condemn it. The investigating committee suggested a permanent board to be appointed by the Governor for a term of six years each, their terms expiring one every two years, so that the Governor would have only one man to appoint during each term of two years.¹ The members

¹It has been suggested that the members of the Penitentiary Commission be made elective, instead of appointive. This proposition is open to serious objections. In the first place it would involve the administration of the penitentiaries in the turmoil of partisan politics, an evil from which we are now seeking to escape. In the second place, popular election is a very poor means of selecting administrative officers of high character and technical training. The qualities required in the management of a great system of penal institutions are not necessarily nor generally combined with the gifts of oratory and personal magnetism that seem to be essential to success in politics. The tendency of modern political reform, too, is toward a reduction in the number of elective officers. A multitude of candidates and issues confuse the voter and make boss rule easy. The tendency to simplification in elections is best illustrated in the case of cities that have the commission form of government, all the attention of the voter being centered upon the mayor and a few commissioners, leaving all administrative offices to be filled by appointment.

of this board should be selected on account of their peculiar fitness for the positions and their willingness to devote a part of their time to the public welfare. Into their hands should be committed the entire management and control of the penitentiary system, with the power to appoint the superintendent, and, upon his recommendation, to select all the subordinate officers of the system, and to fix their salaries. This board would then be as directly and as completely responsible for the conduct of the penitentiaries, as the Board of Regents is for the management of the University, and would be freer from political influence, as the Regents are appointed for terms of two years only.

It should be noted that the reorganization here proposed would require an amendment to the constitution, so as to render the six-year term legal, instead of the present two-year term. The plan as outlined above is strongly approved by Governor Campbell. In fact, he regards it as one of the fundamental reforms, as a sort of starting point in the reorganization of the penal system. But a constitutional amendment cannot be proposed at a called session of the Legislature, and this, it may be stated, is one of the main reasons why Governor Campbell has not called the Legislature together in special session to deal with the penitentiary situation, as was recommended by the investigating committee.

Upon the board here suggested would devolve, not only the general oversight and management of the prisons, but the task of granting paroles and releases under the indeterminate sentence, should that important reformatory agency be adopted in this state. Such paroles and releases should only be made upon the recommendation of the superintendent and the staff, based upon the work and conduct of the prisoner, and after a careful investigation by the board into the merits of each case.¹

¹It has been suggested that as prisoners go to the penitentiary only as a result of a trial of a court of justice, so they should only be released as a result of a trial by a similar court, organized at the penitentiary for the purpose; that, as the State had to prove in the first trial that the accused was guilty and therefore a dangerous man to be at large, the convict should now be required to prove by his conduct and his record that he is no longer dangerous, but is ready to live an honest life and capable of earning an honest living. Such a court is known as a court of rehabilitation and should have power to restore citizenship as well as to grant liberty to the prisoner. For a full discussion of this subject, see *Charities*, Sept. 29, 1907.

2. The Abolition of Existing Abuses.

Through the work of the recent legislative investigating committee organized by Governor Campbell, and the campaign of education waged by the press of the state, the people of Texas have been brought to realize that there have been a great many abuses connected with the administration of our penal institutions. Doubtless many of the reports that have reached the people are exaggerated and unduly sensational. In some cases, no doubt, the events narrated were magnified and enlarged by the witnesses, either consciously or unconsciously, and, in other cases, it is possible that the newspaper accounts were highly colored. Then, too, an exaggerated impression is sure to result where a number of events or abuses, although they may be separated by considerable intervals of time and space, are narrated consecutively within the limits of a newspaper article. The casual reader gets the impression that such events are of daily occurrence. Still another cause of exaggeration is the fact that a legislative committee of investigation feels that it is expected to find something, and so it proceeds to follow up every scent and run down every rumor. As a result, it calls attention to all that is bad in the system and fails to mention what is good or deserving of commendation. It is safe to say that all of these causes of exaggeration have combined to give many people in the state, as well as residents of other states, an exaggerated idea of the abuses that actually exist in our penitentiary system.

But, after all reasonable allowances for exaggeration have been made, the fact still remains that there have existed in the past, and doubtless still exist, in large measure, many grave abuses in the administration of our penal institutions. For example, the investigating committee found that very few sergeants and guards had any knowledge of the rules made for their government, or, if they had knowledge of the rules, they deliberately chose to disregard them. Many cases of intoxication on the part of sergeants and guards are reported, and at various times in the past it seems to have been a common practice for the guards to curse and otherwise abuse the men under their control. While the Penitentiary Board authorizes whipping as a sort of last resort in handling unruly prisoners, it seems to have been almost the only form of punishment used, and revolting stories of unmerciful whippings are told.

"We find," said the committee, "that in a great many instances the provision of the rules requiring that the skin be not broken has been ignored, as the committee, by personal inspection and from evidence fully corroborated, found many men with scars upon their persons, often many on the same body, indicating the most reckless and inhuman use of the strap."

The work required of the prisoners is often excessive. On this point the committee says: "Testimony was adduced to the fact that excessive work and general bad treatment made a wreck of many strong men in a few years, and when they leave the penitentiary they are in many instances unfit for manual labor. . . . In many instances in the past, the men have been run to and from their work, the distance sometimes being from one to three miles, and while at work they have often been pushed excessively." Sunstrokes, it is said, are frequent. The late Judge John N. Henderson told of an instance of four deaths in one squad in two days from that cause alone. Former Prison Physician W. E. Fowler said that fifty per cent, of those who died within the prison walls were worn out and broken down on the farms and were then sent back to the prisons to die.

The committee found that while the food was fairly good in most cases, the prisoners were often poorly clad, and the sanitary condition of most of the outside camps was very bad. In many cases men suffering from contagious and infectious diseases were allowed to eat and sleep and bathe along with the others, thus exposing all alike to the most loathsome diseases. Gambling was found to constitute the chief form of amusement in all the outside camps, and many young men who entered the prisons ignorant of cards left it well equipped as professional gamblers.¹ In a few cases it was found that the sergeants and guards were receiving extra compensation from the contractors, in addition to the regular salary paid by the state, the undoubted object of the payment being to secure a greater amount of work out of the convicts.

Such in brief are some of the abuses that were found to exist in our penitentiary system. It is not the purpose here to attempt to fix the blame for these conditions upon any one, least of all upon

¹It is reported that steps have recently been taken by the Penitentiary Board to put a stop to gambling in the outside camps.

the shoulders of the men now directly responsible for the prison administration. In most cases these abuses were of long standing, and practically all of them may be found described in the reports of the committees that investigated the penitentiaries in 1876 and in 1901. It is probably safe to say that there have never been fewer abuses in the entire history of the penitentiary system than there are at the present time. It has been the settled policy of the present administration not to employ any person as a sergeant or guard, or in any other position connected with the penitentiaries who was addicted to the use of intoxicating liquors, and all persons already in the service who have been known to drink to excess or abuse the convicts have been summarily discharged. Governor Campbell reports that during the three years since he took office, one hundred and twenty-eight sergeants and guards have been discharged for conduct unbecoming an employe of the state, such as drunkenness, and cursing and otherwise abusing the prisoners under their control.

It would seem from the foregoing statement that the abuses that now exist in the penitentiary system exist in spite of the efforts of an alert and vigilant administration. They may, therefore, be assumed to be inherent defects or weaknesses in the existing penal system. They are evils that will exist as long as the present method of handling the prisoners continues, and can only be abolished effectually by a fundamental reform in the whole penal system.

And this brings us to a consideration of the broader questions of penitentiary administration. Among these questions probably the most important is the abolition of the so-called lease system, and the substitution of other means of employing the time and labor of the prisoners. To these questions let us now direct attention.

3. The Lease System Must Go.

It will be of little value to abolish a few cruelties and abuses and discharge a few dozen officials, unless the conditions out of which these abuses grow are corrected, for, with the same conditions existing, the abuses and cruelties will begin again as soon as public attention is turned in another direction. Those who have studied the situation universally agree that the lease system, as it is called,

that is, the practice of hiring out the convicts to be worked by mine owners, railroads, and cotton planters, is a very prolific cause of abuses, that it is, in fact, the chief abuse of them all.¹ As elsewhere quoted, the penitentiary commissioners in their report for 1902 said: "A large majority of the abuses which have arisen in the prison management . . . are not only attributable to, but are the direct and logical results of the custom of hiring convicts to be worked outside the penitentiary walls." The legislative committee that investigated the penitentiaries in 1901, said: "It is our conviction that the lease system is a disgrace to the State and ought to be abolished. As a rule the life of a convict is not as valuable in the eyes of the sergeants and guards and contractors, with a few exceptions, as that of a dog; in evidence thereof we find that the average life of a convict is seven years. Convicts are shot down upon the least provocation and when there is absolutely no excuse for it. Convicts are worked when they are sick and disabled and some have been compelled to work until they dropped dead in their tracks, yet nothing so far as we know has ever been done to remedy this evil."

While the picture here presented may be somewhat overdrawn,²

¹It should be noted that strictly speaking Texas does not have the "lease system," but rather a form of the "contract system." In the lease system, the state surrenders the entire management of the convict, leaving the lessee to furnish the food and clothing, and to work the prisoners under his own guards. This is the worst possible form the practice of selling the labor of the convicts can take. In Texas, however, the state does not surrender the control of the prisoner at all. The state furnishes the food and clothing, and the men are worked under sergeants and guards employed by the state and not in any way responsible to the contractor. The latter furnishes the quarters for the men and indicates the work the men are to do. However, as elsewhere noted, the contractors have at times sought to control the conduct of the sergeants and guards by paying them salaries, in addition to the salaries paid by the state, the evident purpose of the contractor being to secure the largest possible amount of labor from the men—a practice little short of bribery. Such practices are usually condemned by the prison authorities, though the evidence showed that the Board, as at one time constituted, knew of the practice and sanctioned it.

²In his report for 1902, Superintendent Searcy Baker says: "No convict has been shot unless in the act of escaping, and only when necessary to prevent his escape. A full investigation is made by the inspector, and in case of death a justice of the peace holds an inquest and reports the verdict to the proper authorities. In no instance where a convict has been killed has a grand jury found a bill of indictment against the employe who did the shooting." A moment's reflection, however, will show how difficult it would be to secure evidence upon which an indictment and

there was doubtless much truth in what the committee said. The conditions described are substantially the same as those existing in Mississippi twenty years ago, as described in a recent newspaper article written by Hon. Frank Johnston, formerly Attorney General of Mississippi and ex officio member of the State Board of Control of the convict system. He says: "The prisoners, as was the case in all the other Southern States that had the leasing system, were badly treated in almost every conceivable manner. Little or nothing was known publicly or to the outside world of the doings in these convict camps until the winter of 1884, when a lot of fifteen or twenty convicts was returned from a sub-lessee's plantation to the prison hospital at Jackson, in a most deplorable condition, showing ill-treatment in every form. They were half-starved, ragged, and dirty, and all of them had frozen hands and feet. Many of them died from the effects of this brutal treatment, and the survivors were minus the frozen fingers and toes that had to be amputated. The Legislature had an investigation committee, which investigated the whole subject of the treatment of the prisoners. The official report of the committee showed a condition of affairs existing in all, or nearly all, of the sub-lessee convict camps that beggars description. . . . Another investigation by the Legislature of 1888 showed practically the same state of affairs."¹

The importance of these quotations is that they show clearly that the conditions now existing in Texas have existed at all times and in all places where the lease system has prevailed. They fully corroborate the statement elsewhere quoted from the late Judge John N. Henderson of the Court of Criminal Appeals: "From such camps as our State and county convict farms are recruited the criminal ranks; from such schools are turned loose upon society the assassins, cut-throats, rapists, and murderers that infest the State." The vice is inherent in the system itself, and will always exist in any system in which the financial interests of either the state or of the contractor is made the paramount concern of the prison administration.

It follows, therefore, that the lease system must go. In fact it

conviction could be based, as most, if not all, of the witnesses to the shooting would be the other convicts who are disqualified for giving testimony in an ordinary court of justice.

¹*Galveston News*, Dec. 28, 1909.

would have been abolished long ago by the Board of Penitentiary Commissioners, if not by legislative action, but for the fact that there is not sufficient room within the walls of the penitentiaries at Rusk and Huntsville and on the farms owned by the state, to accommodate the total prison population, nor a sufficient number of industries to utilize their labor.¹ The important question, then, is not whether the lease system shall be abolished but

4. *What Shall Be Done With the Men When the Lease System Has Been Abolished?*

To this question there seem to be three possible answers: first, the extension of the policy already begun of working the convicts on farms owned and managed directly by the state; second, the enlargement of the two existing penitentiaries and the development of the industries so as to accommodate all the men within the walls;

¹Not only is it true that the lease system would have been abolished by the Governor and Penitentiary Commissioners if they had had the facilities for caring for the prisoners and utilizing the labor thus released, but it is also true that they have made substantial progress toward providing the necessary facilities, by the purchase of several thousand acres of land. Thus, in addition to the Harlem Farm of 4000 acres, and the Clemens Farm of 8212 acres, which have been owned by the state for ten years or more, there have recently been purchased the Imperial State Farm, of 5235 acres, in Fort Bend county, the Ramsey State Farm, of 7762 acres, in Brazoria county, and the Riddick tract, of 957 acres, which has been added to the Harlem Farm. The policy of the present administration and what it has been able to accomplish towards the abolition of the lease system is indicated by the following quotation from Governor Campbell's message to the Thirty-first Legislature:

"To abolish the lease system, and to provide employment for these convicts in such way as to furnish the least competition to free labor and private enterprise should become the settled policy of the State. To accomplish this has been my constant aim, and I confess that this question presents one of the most difficult of the many problems with which this administration has been confronted. I believe, however, that the problem can be solved, and in response to an enlightened public sentiment it should be correctly solved. No one will contend that this reform can be accomplished in a day, or precipitately, without great expense to the taxpayers. Of course the convicts could be guarded in idleness, but their well-being demands their employment, and it is certain that the taxpayers would not willingly pay the cost of such folly. The number of convicts employed on railroads, on share farm forces, and on other contract forces, have been reduced more than six hundred during the present administration, and the number of convicts employed on State farms on State account have been increased from 338 on September 1, 1906, to 1064 on September 1, 1908, and the forces employed on State farms have been further increased since the last mentioned date."

and third, the purchase of a new site centrally located and the erection of modern prison buildings, equipped with sufficient land and industries to give employment to the prison population that cannot now be cared for in the two penitentiaries and on the state farms. A word must be said concerning each of these propositions.

a. *Shall the State Establish Additional Convict Farms?*—Probably the easiest and most financially profitable substitute for the lease system is to be found in a further extension of the policy of working convicts on lands owned and cultivated on state account. The state already owns four large cotton and cane plantations of from five thousand to eight thousand acres each, upon which some eleven hundred and fifty convicts are worked. These farms have in general been very profitably operated and reports from other Southern States indicate that this method of handling convicts is quite satisfactory in so far as the state's *financial interests* are concerned.¹

However, the wisdom of extending this policy so as to care for all the prison population, not already cared for within the walls at Rusk and Huntsville, is open to serious question. In the first place the administrative difficulties are greatly increased by having the prisoners separated into numerous groups on a dozen or more farms distributed throughout the cotton and cane belt of the state. In the second place the opportunities for abuses to creep into the system are very great, almost as great as under the present contract system. The farms would necessarily be situated in the rural districts, far from the light of newspaper publicity. The men would be worked in the open, without the prison walls, which would make it necessary to arm the guards with guns, straps and other means of preventing escape and of enforcing discipline. The treatment of the prisoner under such circumstances would largely depend upon the character of the individual guard in control, and, as it is impossible not to make mistakes in selecting guards, many abuses are certain to follow. In fact, the report of the recent investigating committee does not indicate that the treatment of convicts was ma-

¹See an article by Ex-Attorney General Frank Johnston, of Mississippi, published in the *Dallas-Galveston News*, Dec. 28, 1909, showing a total income to the state, combined with the increase in the value of lands held by the state, of more than a million dollars, as a result of the labor of the convicts since 1895, when the present policy was adopted.

terially different on the state farms from that on the lease farms, except that the sanitary conditions were as a rule found to be considerably better, though by no means always good.¹ In both systems alike the state furnishes the food and clothing and works the men under the direct supervision of its own officers, the sergeants and guards. The only difference in the two systems is that in one case the state is the proprietor and reaps the profits, while in the lease system the profits go to a private contractor. It may very seriously be doubted, therefore, whether the substitution of the state farm system for the contract system will put an end to the abuses and cruelties that have so recently shocked the moral sense of the community.

Still another and a more serious objection to a further extension of the state farm system is the fact that it adapts itself poorly, or not at all, to the introduction of the reformatory processes that have been dwelt upon in another portion of this paper. Farm work lasts throughout the year—thirteen months in the year, according to a familiar adage—and leaves practically no time for the teaching of trades and the mechanic arts, or for the mental and moral development of the prisoner, even if the state should furnish the equipment and the teaching staff, which are now wholly wanting on all the state farms. Farm work, too, is not adapted to the needs of many of our convicts. A large and growing percentage of the convicts comes from the cities and towns, and they will return to urban conditions of life when their terms are ended. It is clear that what they learn on the farms will be practically worthless to them in the struggle to earn an honest living after they have been liberated and have returned to their homes in the towns and cities.

For these and other reasons that might be suggested it would seem that the state farm system is not vastly superior to the present contract system. It presents many of the same administrative difficulties, it is subject to many of the same abuses, and it lends itself scarcely more readily to the use of reformatory measures. Its main points of superiority is that it enables the state to concentrate somewhat the prison population and to provide more sanitary

¹The Committee, in describing Camp No. 2 on the Imperial State Farm, says, "The sanitary conditions are very poor; in fact, the conditions are very unsanitary and nauseating." In other cases the sanitary conditions on the state farms were found not to be satisfactory.

quarters, and, in addition, whatever profits result from the prisoner's labor go to the state instead of the pockets of private contractors. It is altogether probable that the lands already owned by the state, when entirely cleared of timber and intensively cultivated, will furnish employment to all the convicts that ought to be placed on the farms, such as the older men from the rural communities, and repeaters and incorrigibles who have refused to respond to reformatory treatment, while younger men and first offenders should be confined within the walls and put through a more distinctly reformatory discipline.

b. *Shall the State Enlarge the Existing Penitentiaries?*—If the conclusion just stated in regard to the proposed extension of the state farm system is correct, it would seem to follow that the state should make provision for caring for a larger number of its prisoners within the walls, where more directly reformatory treatment may be given than is possible on the state farms. The additional facilities may be secured either by enlarging the existing penitentiaries or by building a new one. If the existing penitentiaries are used they will need many repairs and enlargements, and the general plan of the buildings will have to be altered to make them suitable for the introduction of truly reformatory processes. It would seem wise, therefore, if they are to be enlarged, to convert one of them into an intermediate prison or reformatory for young men between the ages of sixteen and thirty, and first offenders generally, and continue the other as a prison for older criminals from the cities and towns for whom farm labor is not suitable or desirable.

But the wisdom of making any large expenditures for enlarging the existing penitentiaries may well be doubted. Rusk and Huntsville are located in the eastern section of the state, far from the present center of population and still further from the future center, when the rapid settlement of the western lands has gone on for a few more decades. Not only are they hundreds of miles from the geographical and population centers of the state, but they are two hundred miles from the seat of government and are very poorly supplied with railway facilities, neither being located upon the line of an important trunk railway. They were selected as prison sites in the early days when they were among the most populous and accessible places in the state. But the great railway lines passed

them by, and the center of population has shifted far to the west, leaving them thoroughly out of the way and inaccessible.

Another reason for doubting the wisdom of enlarging the existing penitentiaries, is the fact that the buildings are old, out of date, dilapidated, and thoroughly unsuited for modern prison purposes. It is probable that it would cost as much to renovate the two existing penitentiaries as to construct a new one on modern plans. The investigating committee in its report to the Governor said: "The buildings at Huntsville where the work is being done are antiquated and dilapidated, and are crowded together so that the work cannot be properly carried on. None of these buildings is fireproof, so that if fire should break out in them not only will this entire system be in danger of destruction, but the lives of the prisoners confined therein would be put in great jeopardy. We think this should be remedied as speedily as possible by rearranging and *replacing the old buildings with modern fireproof buildings*, so as to remove this great danger, as well as to facilitate the work carried on in them. A new hospital building is also needed, located in a more quiet place. The present dining room and chapel building is reported to us as being in an unsafe condition, and we advise that this building be examined by competent parties to determine its safety, and if it should be found unsafe then it should be torn down and a new building erected in its place. There is a partial sewerage system at this prison, which should be extended and completed so as to cover the entire system, and in this way the buckets used by convicts in their cells can be entirely removed. . . . The bathing facilities are inadequate. . . . We advise that adequate vault room be constructed, so as to preserve such books and papers (accounts of the penitentiary system) from destruction by fire."

Such are the conditions at Huntsville. At Rusk they seem to be no better, for we read: "We advise that all of the prison buildings at Rusk be repaired so as to preserve them, and that all the premises and buildings be cleaned up and put in a sanitary condition. A sewerage system should be installed in the prison . . . the floor of the dining room repaired, adequate bathing facilities for the convicts established, and a vault constructed for the keeping of the books and records of the prison."

To this evidence may be added the statement of Senator Weinert,

a member of the investigating committee, who, in an interview given out at Austin, December 15, 1909, said: "It strikes me that the Huntsville and Rusk prisons, *which are but masses of junk*, should be discarded, and a new, up-to-date penitentiary established at some central point, preferably Austin, under the eye of the government and the general public. *The money required to remodel the two prisons we now have would nearly build a modern penitentiary.*"

The question of discarding the two existing penitentiaries hardly need be raised, for the state will doubtless find abundant use for both of them. But when one considers the inaccessibility of the two existing prisons, the antiquated and dilapidated condition of the buildings, and the large expenditures that will have to be made to render them serviceable as reformatory institutions, he is certainly justified in questioning the wisdom of spending any more money upon them than may be necessary to preserve the property from ruin. And that brings us to the third question:

c. *Shall the State Erect a New Penitentiary?*—An affirmative answer would seem to follow as a necessary result of the line of reasoning presented in the preceding paragraphs, and from the conditions at the penitentiaries as just described. The lease system **must** go. If so, the men must be cared for and kept busy in other ways. A further extension of the state farm system as a means of caring for the men is open to serious objections, and it would seem to be a well-nigh hopeless task to undertake to make modern prisons out of the two existing penitentiaries. Therefore, it would seem to be the part of wisdom for the state to select a new site centrally located and construct a prison on modern principles, of the type described elsewhere as an intermediate prison or reformatory.

Such a prison would enable the state to discontinue the lease system at once or as soon as the new buildings are ready for occupancy, and, of equal importance, it would make it possible to classify the prisoners and place the younger men under directly reformatory influences. The construction of such a prison would give the state a fairly complete system of penal institutions. Boys under sixteen would go to the State Institution for the Training of Juveniles, at Gatesville. Young men from sixteen to thirty would be sent to the new intermediate prison, or reformatory, while older men, repeaters, and incorrigibles would be distributed to the two prisons at Rusk

and Huntsville, and to the state farms, according to their character, color, former occupations, physical strength, and apparent needs.

It would only remain, then, for the state to develop these several institutions to the point of highest efficiency, and for the counties and cities to establish the proper juvenile courts and child-saving institutions and reform their jails and convict farms, in order to bring our penal institutions into harmony with the best modern thought and practice on the subject of penal administration.

There could hardly be a more psychological moment for entering upon the work of true, far-reaching prison reform. The state at large is disgusted with the existing lease system with its revolting abuses, and stands ready to bear the necessary expense of providing a substitute for it. The serious question is to find a proper substitute that will not itself have to be discarded in a few years in a search for more humane and directly reformatory methods. The plan here suggested of constructing an intermediate prison for young men will, it is believed, solve this difficult question and begin the work of reconstructing our penal machinery along lines dictated by the experience of the most advanced communities.

The cost of such a prison as is here contemplated is quite considerable, and the necessity of providing substantial fireproof buildings that shall serve the state for generations to come will make it more expensive. But there is no more stupid wastefulness on the part of the state than the erection of cheap, flimsy buildings that last scarcely a generation and must then be torn away and replaced by others.¹ But there should be no haphazard work in the construction of such an institution. The Penitentiary Commissioners should first select a well-trained man, experienced in reformatory work, to be warden of the new prison, and then in company with the warden so chosen, they should make a thorough-going inspection of the best reformatory prisons in this country, and the plans

¹There are buildings upon the campus of the University and of the A. & M. College, not twenty years old, that are not only not fireproof or provided with fire escapes, but are actually in danger of collapsing. There are other state institutions that have fared no better. Such buildings should never have been constructed, and it is to be hoped that the state will never again be guilty of such folly.

should be drawn by an experienced prison architect. The construction and management of a reformatory prison is as technical an enterprise as the building of a locomotive or a battleship and serious blunders are certain to occur unless we procure the assistance of men who have made it a life study.

5. *The State Institution for the Training of Juveniles.*

Probably in no part of the penal system of Texas has the state's policy been a more conspicuous failure in the past than in the management of what has heretofore been called the House of Correction and Reformatory, located at Gatesville. That institution has not been a reformatory in any sense of the word, and, if at times boys released from it have lived honorable lives, it only goes to prove that even criminal youths are not totally bad, and that the good in human nature will sometimes overcome the double handicap of bad environment and a criminal name. Until recently it has been nothing more than a boy's penitentiary, a prison where boys of tender years have been placed under rough, untrained guards armed with pistols or shotguns, and forced to cultivate the crops grown on the lands owned or leased by the state. The treatment of these youthful offenders can hardly be said to have differed from the treatment given the older offenders in the two adult penitentiaries. It is true a pretense has been made at giving the boys some school training, but the school room and the equipment would be a disgrace to any community in the state, and the teaching staff for the hundred and eighty boys in the institution consisted for many years of but a single teacher. The school work continues for only a few months in the year and only the elementary branches are taught, and no attention is given to manual training or the teaching of trades.

In his last biennial report State Superintendent of Education R. B. Cousins, after giving an account of the situation at Gatesville, says: "The Reformatory in Texas has the air of a prison and nothing more. It has plenty of guards with guns—this is about all, it seems—and they are necessary, perhaps. No *school-house* in the the Reformatory, no school furniture, no trades nor industrial schools! A boy goes out *older* and *stronger* (in what?) than when he went in. The official title of the Superintendent of

the Reformatory is The Assistant Superintendent of *Penitentiaries!* The boys are in the penitentiary.

"The Superintendent is not to blame. The Board is not to blame—I am not trying to locate the blame. The fact is that this institution as it is now conceived and managed, and has been for years, is out of harmony with the best thought of the age. . . . Every boy who goes there should come away instructed in the ordinary branches, and *trained* in some industrial pursuit. It would be profitable for the State to accept the *loss from the products* of the Reformatory, as such, and save to the State, even at considerable expense, the *boys* that go there."¹

A similar account of the Gatesville institution is presented in a letter written by Mr. Rosing, a probation officer of El Paso county, who made an inspection of the reformatory last August while there for the purpose of placing three Mexican boys in the institution. The letter was in the nature of a report to County Judge Albert S. Eylar, of El Paso county, and in part is as follows:

"Of a total of 170 boys on hand at a time only 12 receive any manual instruction whatever. The instruction these 12 boys receive is of such a nature that very little if any practical good is accomplished. Two of these boys work in a room making shirts and other things for the inmates, two boys make shoes; one or two work in the kitchen, and two or three in the cotton gin and press. . . . I was strongly impressed with the fact, not only from one person alone but from several, that the general aim of the institution seemed to be how much corn and cotton could be raised to reduce the expenses, no idea being entertained as to how most to benefit the juvenile delinquents. . . .

"The school room equipments are positively the worst it has ever been my lot to inspect, and the two rooms used for school purposes were the most disgraceful and dilapidated. The benches were fit for kindling wood only and I do not believe that instruction imparted under such conditions can have any practical value whatever. . . . Another depressing feature to my mind was the idea, which was never lost sight of, that the institution was really a prison and not an industrial school, which it ought to be. For ex-

¹Sixteenth Biennial Report of the State Superintendent of Public Instruction, 1908, pp. 50-52.

ample, in the dining room the boys are marched in files and take their place at specially constructed places, which all face one way, in full view of a guard who is ever present to see that the prisoners do nothing except eat their meals in perfect silence. The whole idea impresses me as being absolutely and fundamentally wrong."

The foregoing quotations give a good idea of what the Gatesville Reformatory has been from the date of its establishment more than twenty years ago down to the last year. Within the last twelve months, however, a very important step has been taken toward converting this boys' penitentiary into a modern industrial reform school. It should be distinctly understood that only a start has been made and that the institution as it now stands is very far from being an industrial school in the true sense of the word, or a genuine reformatory. But that an important beginning has been made is evident from the following summary of the principal features of the law passed by the Thirty-first Legislature:

1. The name of the institution is changed from "The House of Correction and Reformatory" to "The State Institution for the Training of Juveniles," and it is entirely divorced from the penitentiary system, and is placed under the control of a separate board, of whom two members must be women.

2. It is made the duty of the board to provide suitable instruction along mental and moral lines, including instruction in the common school branches, as well as in manual training and agriculture. "Each inmate," says the statute, "shall be given definite instruction and training in some useful occupation. Each inmate shall be given such moral training and discipline as he is capable of receiving. The prime end to be sought by the board shall be to reform, educate, and train the children committed to the institution into industrious and useful law-abiding citizens, strengthen their self-control and place them in a moral environment that will build character and inculcate correct ideas of civic virtue and responsibility."

3. It is made the duty of the board to establish and maintain a "system of grading and promotion on a basis of moral, intellectual and industrial advancement of the inmate."

4. The indeterminate sentence is made applicable to all youths sent to the reformatory, and the superintendent, with the approval

of the chairman of the board, is authorized to terminate the sentence of an inmate whenever he thinks it for the best interest of the boy to do so. In such cases the boy is to be sent home upon probation, and, after six months, is to be granted an unconditional release.¹ •

Since the passage of this law the administration has done much to render the institution clean and sanitary on the one hand, and humane in its treatment of the boys on the other. A new dormitory, which is now in course of construction, will help to relieve the crowded conditions² and will furnish better quarters for the school work. Some opportunity is furnished for a number of the boys to learn something of a few trades, as they are given work as apprentices in the shoemaker's shop, the tailor shop, the laundry, the bakery, and boiler room. But this work is simple in kind, insufficient in amount, and is thoroughly unorganized, and the boy learns what he can practically without instruction. It remains for the Legislature to supply the board with sufficient funds to build and equip shops for teaching trades and manual training, as well as for providing adequate instruction force for giving training in these technical subjects and in the school of letters. At the head of this part of the work of the institution should be placed an experienced educator, capable of organizing and carrying on an efficient literary and technical school of instruction. If possible he should be a man who has had experience in a first-class reformatory institution.

It will not be out of place here to repeat the suggestion made in connection with the proposed intermediate prison, that before any considerable expenditure is undertaken a committee of the board should make a tour of inspection of the best reformatory institutions in this country, such as the State Industrial School for Boys, at Golden, Colorado; the John Worthy School, at Chicago; the Illinois State Reformatory, at Pontiac; the New York State Reformatory, at Elmira; and the two Massachusetts industrial schools, the one for boys at Westboro, and the one for girls, at Lancaster. In this way the board would have an opportunity to select the best

¹General Laws of Texas, 1909, pp. 103-108.

²Captain Boyd, the Superintendent, has been forced to send out word to the county judges not to send any more white boys to the institution until further notice.

features that have been worked out in the reformatories of this country, and at the same time to get track of well-trained men of practical experience in penological work, to take charge of the special lines of work to be installed at Gatesville. The state cannot spend a few hundred dollars more profitably than sending its workers to learn from others. There is no prodigality so great as parsimony in securing ideas, plans, and expert workers wherever they may be found.

6. *Other Suggestions.*

The reorganization of the penal institutions should be accompanied by the modifications of the penal laws already suggested. The indeterminate sentence should be introduced, especially for the intermediate prison or reformatory, if such an institution should be created, and the parole system should be developed and made more serviceable. Substitutes should be found for the short jail sentence, and the principle of reparation or restitution, along with the probation system and the suspended sentence, should find a place in our laws.

Finally our county jails and our county convict farms should receive attention. In many cases they are efficient schools of vice and crime instead of agencies of public order. If the evidence recently produced before the Federal grand jury at Austin may be believed, some of these county convict farms have been the scenes of peonage practices and cruelties rivaling the recent exposures in the Atlanta city prisons.

BIBLIOGRAPHICAL NOTES.

The volume of literature on the subject of crime and the criminal is very large. The study of the causes of crime and the methods of preventing the commission of criminal acts constitutes one of the most important branches of the science of sociology, while the related branch of the subject, the study of penalties and penal systems, is sometimes regarded as a separate science and is spoken of as the science of penology. Manifestly it would be out of place in a bulletin of this size to undertake any extensive discussion of the literature of these sciences, or to attempt to make a complete list of books bearing on this subject. In the following list only the books most useful to the general reader are given. The books marked with a star (*) are contained in the small circulating libraries on the subject of penitentiary reform, which have been collected by the University of Texas Extension Department, and will be sent out to clubs and debating societies upon application free of charge other than the express charges:

I. *General Works on Crime and Prison Management.*

- *Wines, *Punishment and Reformation*, New Edition, 1910. \$1.75. Thomas Y. Crowell & Co., New York. "A book for governors, for legislators, for judges to ponder over."
- *Ellis, *The Criminal*, Third Edition, 1907. \$1.50. Charles Scribners' Sons, New York. This book is sound and thoroughly readable.
- Boies, *The Science of Penology*, 1901. \$3.50. G. P. Putnam's Sons, New York. A very comprehensive and useful book, but unfortunately out of print.
- *Henderson, *The Dependent, Defective, and Delinquent Classes*. Second Edition, 1908. \$1.50. D. C. Heath & Co., Boston.
- *Ferri, *Criminal Sociology*, 1896. \$1.50. D. Appleton & Co., New York. A profound work, but rather technical for the general reader.
- **Crime and Criminals*. 1910. 75 cents. The Prison Reform League Publishing Co., Los Angeles, Cal. This book contains much information about the abuses in the various prison systems of the country, but it is rather highly colored.

- *Masten, *The Crime Problem, What to Do About It and How to Do It*. 1910. \$1.50. The Star-Gazette Co., Elmira, N. Y. Not a very strong work, though Judge Ben B. Lindsey, of the Denver Juvenile Court, is quoted as saying: "It is one of the sanest, most practical and helpful books of its kind ever written. It has the advantage of being brief, crisp and to the point."
- Drähms, *The Criminal: His Personnel and Environment; A Scientific Study*. 1900. \$2.00. The MacMillan Company, New York.
- Whiteway, *Recent Object Lessons in Penal Science*. 1902. \$1.25. E. P. Dutton & Co., New York.
- Russell and Rigby, *The Making of the Criminal*. 1906. \$1.25. The MacMillan Co., New York.
- Cutter, *Lynch-Law; An Investigation into the History of Lynching in the United States*. 1905. \$1.50. Longmans, Green & Co., New York.
- Keeler, *The Crime of Crimes; The Convict System Unmasked*. 1907. 25 cents. Mrs. C. O. Keller, 715 Rhode Island Avenue N. W., Washington, D. C.
- **The Reformatory System in the United States*. 56th Cong. 1st Sess. House Doc. No. 459. 1900. For sale by Superintendent of Documents, \$1.00. A collection of valuable papers by a number of experts in penology.
- *Wright, Carroll D., *Relation of Economic Conditions to the Causes of Crime*. Reprint from the Annals of the Amercian Academy of Political and Social Science, Philadelphia. 25 cents.

II. Reform of Criminal Procedure.

Besides the discussions of this subject to be found in the general works above listed, the following will be found useful:

- *Parmalee, *Anthropology and Sociology in Relation to Criminal Procedure*. 1908. \$1.25. The MacMillan Company, New York.
- Train, *The Prisoner at the Bar; Sidelights on the Administration of Criminal Justice*. 1906. \$1.50. Charles Scribners' Sons, New York.

- *Lewis, *Principles of Reform in Penal Law*. Reprint from Annals of the American Academy of Political and Social Science. May, 1903. Philadelphia.
- *Burrows, *Recent Tendencies in Criminal Legislation*. Reprint from the Annals as above. 1904. 15 cents.
- Garner, *Crime and Judicial Inefficiency*. Reprint from the Annals as above. 1907. 35 cents.

III. *The Juvenile Delinquent.*

On this important subject there is a great volume of literature, of which the following will be found representative:

- *Travis, *The Young Malefactor*. 1908. \$1.50. Thomas Y. Crowell & Co., New York.
- Morrison, *Juvenile Offenders*. 1900. \$1.50. D. Appleton & Co., New York.
- Folks, *Care of Destitute, Neglected, and Delinquent Children*. 1902. \$1.00. The MacMillan Company, New York.
- Snedden, *Administration and Educational Work of Juvenile Reform Schools*. 1907. \$2.00. Teachers' College, Columbia University, New York.
- The Problem of the Children and How the State of Colorado Cares for Them*. A Report of the Juvenile Court of Denver, 1904. Thomas L. Bonfils, Clerk of the Court, Denver, Colorado.
- *Lindsey, Judge Ben B., *The Juvenile Court and Probation of the Juvenile Offender*.
Reformation of Juvenile Delinquents through the Juvenile Court, an address delivered before the Conference of Charities, Atlanta, 1903. Judge Ben B. Lindsey, Denver, Colorado.
- *A Campaign for Childhood, "Charities." January 7, 1905. 10 cents. Address "The Survey," 105 East 22nd St., New York.
- Ten Years of the Juvenile Court*, "The Survey." February 5, 1910. 105 East 22nd St., New York. 25 cents.
- Report of the Commission to Select a Site for the New York Training School for Boys*. 1909.
- Report of the New York State Probation Commission*. Homer Folks, 105 East 22nd St., New York.

Barrows, *Children's Courts in the United States; Their Origin, Development, and Results*. U. S. House Doc. 701, 58th Cong. 2nd Sess. 1904. Sold by Superintendent of Documents, Washington, D. C., for 20 cents.

DeLacy, *Juvenile Court*, a report of the first year's operation of the Juvenile Court of the District of Columbia. 60th Cong. 1st Sess. Sen. Doc. 144. 1908. For sale by Superintendent of Documents, Washington, D. C. 5 cents.

Macdonald, *Juvenile Delinquents*, being a hearing on the bill to establish a laboratory for the study of the criminal and pauper classes. 60th Cong. 1st Sess. Sen. Doc. 532. 1908. For sale by Superintendent of Documents, Washington, D. C. 25 cents.

Juvenile Criminality in Germany. (Education Report, 1904, Vol. 1, pp. 703-713.) For sale by Superintendent of Documents, Washington, D. C. 85 cents. (Same volume contains a paper on temperance instruction in the public schools and liquor question.)

Methods Employed in Reformation of Juvenile Offenders. Education Report, 1890, Vol. 2, pp. 1063-1072.) Superintendent of Documents, Washington, D. C. 90 cents.

IV. *The Indeterminate Sentence, Probation, and Parole.*

The general works on penology all devote more or less space to these special topics, which are counted very important parts of a reformatory system. The following are a few special references on these subjects:

*Barrows, *The Indeterminate Sentence and the Parole Law*; a report prepared for the International Prison Commission. Published as Senate Document No. 159, 55 Cong. Sess. 3rd Sess., 1899. Cloth \$1.25. Superintendent of Documents, Washington, D. C. (Same volume contains a collection of papers on Reparation for Crime and other subjects, under the title of "Penological Questions," published as Senate Document, No. 1448, 55 Cong. 3rd Sess.

*Lewis, *The Indeterminate Sentence*, being one of a number of papers published as House Document No. 459, 56th Cong. 1st Sess., 1900, under title 'The Reformatory System in the United

States." Cloth \$1.00. Superintendent of Documents, Washington, D. C.

*Molineux, *A Court of Rehabilitation*, a strong article published in "Charities," September 28, 1907. Address "The Survey," 105 East 22nd St., New York.

Lindsey, *Probation and the Criminal; Childhood and Morality*. Pamphlets by Judge Ben B. Lindsey, of the Denver Juvenile Court.

V. *Conditions in the Texas Penitentiaries.*

Aside from the vast quantity of material that has appeared in the newspapers of the state during the last few months, the best sources of information in regard to conditions in Texas are the following:

Biennial Reports of the Texas State Penitentiary Commissioners. Report of the committee appointed to investigate the penitentiaries, in 1876, to be found in House Journal, 1876, pp. 395-408.

Report and Proceedings of the State Investigating Committee, 1902, beginning on page 322.

*Report of the recent Penitentiary Investigation Committee, published in all the leading papers of the state, November 29, 1909.

Henderson, *The Texas Penitentiary System*. An address delivered before the National Prison Association in session at Austin, Texas, 1897, published in the proceedings of the Association for that year.

*Potts, *The Convict Labor System of Texas*. Reprint from the Annals of the American Academy of Political and Social Science. May, 1903. Philadelphia. 25 cents.

*Finty and Toomey, *Our Penal System and Its Purposes*. Reprint in pamphlet form for free distribution of a number of articles originally published in the *Dallas-Galveston News*.

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13. *The American Mistletoe*, by H. H. York. 31 p., pl. 1909. 50 cents.
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15. *Field Studies of the Behavior of the Lizard *Sceloporus Floridanus**, by H. H. Newman and J. Thomas Patterson. 23 p., illus. December, 1909. 25 cts.

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